

Inspector General

United States
Department of Defense



Improvements Needed in U.S. Special Operations
Command Global Battlestaff and Program Support
Contract Oversight

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Acronyms and Abbreviations

CAO	Contract Administration Office
COR	Contracting Officer's Representative
DCMA	Defense Contract Management Agency
DPAP	Defense Procurement and Acquisition Policy
EDA	Electronic Document Access
FAR	Federal Acquisition Regulation
GBPS	Global Battlestaff and Program Support
IDIQ	Indefinite-Delivery Indefinite-Quantity
PMR	Procurement Management Review
PWS	Performance Work Statement
SOFARS	Special Operations Federal Acquisition Regulations Supplement
USSOCOM	U.S. Special Operations Command
WAWF	Wide Area Workflow



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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April 26, 2013

MEMORANDUM FOR COMMANDER, U.S. SPECIAL OPERATIONS COMMAND

**SUBJECT: Improvements Needed in U.S. Special Operations Command Global
Battlestaff and Program Support Contract Oversight
(Report No. DODIG-2013-075)**

We are providing this report for review and comment. U.S. Special Operations Command officials did not properly administer the Global Battlestaff and Program Support task orders in accordance with Federal guidance. Specifically, contracting officers awarded task orders with unclear requirements and without measurable outcomes. In addition, task orders may have included inherently governmental duties and elements of a personal service contract. Further, contracting officers did not adequately support fair and reasonable price determinations for 20 modifications, totaling approximately \$38.8 million, or validate that contractors were entitled to approximately \$50.9 million paid on Global Battlestaff and Program Support task orders. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. Comments from the Director, Special Operations Research, Development, and Acquisition Center were generally responsive. However, the Director's comments were nonresponsive for Recommendation B.3 and partially responsive for Recommendations B.4 and C.1. Therefore, we request that the Director, Special Operations Research, Development, and Acquisition Center, provide comments on Recommendations B.3, B.4, and C.1 by May 24, 2013.

If possible, send a Microsoft Word document (.doc) file and portable document format (.pdf) file containing your comments to audjsao@dodig.mil. Portable document format (.pdf) copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8901. If you desire, we will provide a formal briefing on the results.

A handwritten signature in blue ink that reads "Daniel R. Blair".

Daniel R. Blair
Deputy Inspector General
for Auditing



Results in Brief: Improvements Needed in U.S. Special Operations Command Global Battlestaff and Program Support Contract Oversight

What We Did

This report focuses on the U.S. Special Operations Command (USSOCOM) Global Battlestaff and Program Support (GBPS) contract. For this audit, we determined whether USSOCOM properly administered task orders awarded under the GBPS contract, valued at approximately \$231 million, as of November 16, 2011.

What We Found

USSOCOM contracting officers did not properly administer GBPS task orders in accordance with Federal guidance. For the 28 task orders reviewed, contracting officers awarded 26 task orders with unclear requirements, 24 task orders that did not always have measureable outcomes, 9 task orders that may have included inherently governmental duties, and 24 task orders with elements of a personal services contract. This occurred because contracting officers did not ensure task order terms complied with Federal Acquisition Regulation requirements to include clear, specific, and objective terms with measurable outcomes or review task orders for inherently governmental functions and elements of a personal services contract. USSOCOM personnel preferred unclear task order requirements to maintain flexibility and to support emerging tasks.

In addition, contracting officers did not adequately support determinations of fair and reasonable pricing for 20 modifications, totaling approximately \$38.8 million, as required by Federal guidance. Contracting officers stated that time constraints prevented them from documenting their reviews of fair and reasonableness price analyses. Further, contracting officers did not validate that contractors were entitled to approximately \$50.9 million paid on task orders. Specifically, contracting officers did not verify that contractor services were performed or that services received from the contractor met contract

requirements before certifying invoices for payment. This occurred because contracting officers approved “scheduled interval” payments on an exception basis without validating services were received and conformed to contract requirements.

Although recommended in two prior DoD Office of Inspector General audit reports, USSOCOM corrective actions taken to address previous recommendations did not adequately improve controls over its contracting processes.

The lack of appropriate contract award and administration put USSOCOM at risk of not getting the best value for GBPS services and improperly executing future task order options, valued at \$206 million.

What We Recommend

Among other recommendations, we recommend the Director, Special Operations Research, Development, and Acquisition Center, implement controls to ensure task orders contain clearly defined performance work statements; comply with Federal and DoD regulations controls to verify contracting personnel perform price analysis for modifications over \$700,000; and develop procedures for the contracting officer or contracting officer representatives to validate contractor payment requests before certifying invoices for payment.

Management Comments and Our Response

Comments from the Director, Special Operations Research, Development, and Acquisition Center were generally responsive. However, we request that the Director provide comments to Recommendations B.3, B.4, and C.1 by May 24, 2013. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Special Operations Research, Development, and Acquisition Center	B.3, B.4, C.1	A.1, A.2, A.3, A.4, A.5.a, A.5.b, A.5.c, A.5.d, A.5.e, A.5.f, B.1, B.2, C.2

Please provide comments by May 24, 2013.

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Introduction

Objective

Our objective was to determine whether U.S. Special Operations Command (USSOCOM) provided adequate oversight of the Global Battlestaff and Program Support (GBPS) contract. We focused the scope of the audit on contracting officers' administration of the task orders awarded under the GBPS contract. Specifically, we determined whether USSOCOM personnel properly administered task orders awarded under the GBPS contract. See Appendix A for a discussion of the scope and methodology.

We also followed up on recommendations made in two DoD Office of Inspector General (OIG) reports: Report No. D-2009-102, "Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command," September 18, 2009; and Report No D-2009-083, "Logistics Support Contracting for the United States Special Operations Command," May 28, 2009.

Background

The mission of USSOCOM is to provide fully capable Special Operation Forces to defend the United States and its interests and to synchronize the planning of global operations against terrorist networks. The Commander, USSOCOM, delegated acquisition authorities for USSOCOM to the Acquisition Executive, Special Operations Research, Development, and Acquisition Center. The Directorate of Procurement, a subordinate unit of Special Operations Research, Development, and Acquisition Center, awarded the GBPS contract on April 30, 2010.

GBPS Contract Award

The GBPS contract is an indefinite-delivery, indefinite-quantity (IDIQ) contract for services or supplies with a \$1.5 billion ceiling covering a 3-year base and a 2-year option period. The GBPS IDIQ contract was awarded to four prime contractors under contracts H92222-10-D-0016, H92222-10-D-0017, H92222-10-D-0018, and H92222-10-D-0019. The four prime contracts require contractors to compete for work after USSOCOM officials submit a request for proposal in the areas of operational and intelligence support, acquisition and engineering support, and business operations and financial management support. The GBPS IDIQ contract allows for five task order types: firm-fixed price, firm-fixed price level of effort, fixed price incentive fee, cost-plus-fixed fee, and cost-plus-incentive fee. As of November 16, 2011, there were 73¹ task orders, valued at approximately \$231 million, under the prime contracts.

¹ The universe contains 74 task orders, including 1 classified task order with an unknown value; however, the audit team did not include the classified task order in the universe for sample selection.

Service and IDIQ Contracts

Federal Acquisition Regulation (FAR) Part 37, “Service Contracting,” defines a service contract as a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Performance-based contracts for services must include measurable performance standards (such as quality, timeliness, and quantity). A multiple award IDIQ contract allows for streamlining of the contracting process because negotiations are made with select prime contractors. The Government uses an IDIQ contract when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period. In addition, IDIQ contracts allow for flexibility in both quantities and delivery scheduling and ordering of supplies or services after requirements materialize through task order issuance. Task orders under IDIQ contracts must clearly describe all services to be performed or supplies to be delivered, so the full cost or price for the performance of the work can be established when the order is placed. Task orders must be within the scope, issued within the period of performance, and within the maximum value of the contract.

GBPS Contract Oversight Roles and Responsibilities

The FAR establishes roles and responsibilities for DoD contracting and agency officials. FAR Subpart 1.6, “Career Development, Contracting Authority, and Responsibilities,” states that contracting officers must ensure performance of all necessary actions for effective contract administration, compliance with the terms of the contract, and safeguarding USSOCOM’s interests in its contractual relationships. In addition, FAR 42.302, “Contract Administration Functions,” permits contracting officers to delegate contract administration to a contract administration office (CAO). CAO responsibilities for the GBPS contract were delegated to the Defense Contract Management Agency (DCMA) until August 2, 2011, when DCMA returned the contract administrative function to USSOCOM. Whether contract administration is delegated to a CAO or not, a contracting officer retains responsibility for ensuring that all contract administration functions are performed. Contracting officers must designate and authorize, in writing, a contracting officer’s representative (COR) on all contracts and task orders. CORs are responsible for ensuring that contractors comply with all contract requirements and that overall performance is commensurate with the level of payments made throughout the life of the contract. COR activities should be tailored to the dollar value and complexity of the specific service contract, including surveillance of contractor performance.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses within USSOCOM regarding contract administration. Specifically, contracting officers did not follow FAR requirements to ensure task orders included clear, specific, and objective terms with measurable outcomes or review task orders for

inherently governmental functions and elements of a personal services contract. In addition, USSOCOM officials did not take action to address recommendations made in DoD OIG Report No. D-2009-102 to improve controls over its contracting processes. Specifically, the recommendations requested USSOCOM officials to implement FAR procedures for performing and documenting fair and reasonable price determinations. Furthermore, contracting officers approved “scheduled interval” payments on an exception basis and contracting officers certified invoice payments in Wide Area Workflow (WAWF) without validating services were received and conformed to contract requirements. We will provide a copy of the report to the senior official responsible for internal controls in USSOCOM.

Finding A. Improvements Needed in the USSOCOM Task Order Administration

USSOCOM contracting officers did not properly administer GBPS task orders in accordance with Federal guidance. Specifically, for 28 task orders reviewed,² contracting officers:

- awarded 26 task orders with unclear requirements in the performance work statements (PWSs),
- awarded 1 task order without any identified outcomes and 24 task orders that did not always have measurable outcomes,
- may have included inherently governmental duties in 9 task orders, and
- awarded 24 task orders that contained elements of a personal service contract.

This occurred because contracting officers did not validate that task order terms complied with FAR requirements. Specifically, a contracting officer stated USSOCOM personnel preferred task order PWSs with vague requirements to maintain flexibility and to support emerging tasks. In addition, the contracting officer stated that while the basic GBPS contract was reviewed for inherently governmental functions and was deemed nonpersonal in nature, the task orders were not reviewed for inherently governmental functions or personal services.

The lack of appropriate contract award and administration put USSOCOM at risk of not getting the best value for GBPS services and improperly executing future task order options, valued at \$206 million. Specifically, contracting officers increased the risk of contractors not performing effectively and not being able to hold contractors accountable for services not meeting the agency's needs and intended task order requirements. Contracting officers increased the risk for potential waste and abuse and did not protect the interests of USSOCOM. In addition, contracting officers may not have efficiently used DoD funds.

Contracting Officers Awarded Task Orders With Unclear Requirements

For 28 task orders reviewed, contracting officers awarded 26 with unclear requirements in the PWS. FAR Subpart 16.5, "Indefinite-Delivery Contracts," states that task orders under IDIQ contracts must clearly describe all services to be performed or supplies to be delivered, so the full cost or price for the performance of the work can be established when the order is placed. In addition, FAR Subpart 2.1, "Definitions," states that PWSs are statements of work for performance-based acquisitions that describe the required results in clear, specific, and objective terms. Further, DoD issued the "Guidebook for

² See Appendix C for a break out of the 28 task orders and the associated concerns identified for each task order.

Performance-Based Services Acquisition (PBSA) in the Department of Defense,” December 2000.³ The Guidebook states that task orders require clear, precise, definitive PWSs because offerors interested in proposing will interpret words within the PWS to identify potential costs and ability to compete with other offerors. The Guidebook also stated that developing a PWS involves a series of analysis-oriented steps to help identify and define the requirement, such as “what, when, where, who.” In addition, the Guidebook further stated certain words, such as “and/or and as required,” can confuse rather than clarify requirements. However, the 26 task orders were not always clear enough to determine what specific services were required. For example, we identified the following unclear requirements in the task order PWS listed below.

- Contract H92222-10-D-0018, task order 11 stated for the Systems Engineering and Configuration Management Support, the contractor “will submit reports or debriefs, and when appropriate, we will provide a technical assessment of the associated risks.” However, this requirement is unclear as it does not define the type of “reports and debriefs,” or the “appropriate” time to perform technical assessments (for example, monthly, quarterly, or annually).
- Contract H92222-10-D-0018, task order 11 stated the contractor “will attend program Test and Evaluation working groups, attend System Safety working groups, witness tests and demonstrations when required, and visit production and manufacturing facilities when required.” However, the terms are open-ended and do not state objectively how often the contractor is required to attend the working groups. Open-ended requirements are unclear and may not allow the contractor to calculate fair costs for the requirements.
- Contract H92222-10-D-0019, task order 7 stated the “contractor shall perform cost data collection and analysis, on an as needed basis over the life of the task order, to identify and/or develop cost factors and/or CERs [Cost Estimating Relationships] and prepare a LCCE [Life Cycle Cost Estimate] for new systems.” However, “and/or,” creates ambiguity as it may indicate that both requirements are true or that only one is true, and it is unknown which of the two requirements the contractor should fulfill.

See Appendix C for the list of 26 task orders with unclear PWS requirements. To facilitate compliance with FAR requirements, USSOCOM officials need to implement controls ensuring contracting officers award task orders with clearly defined performance work statements. In addition, USSOCOM officials should require a review of existing task orders for unclear requirements and modify or terminate task orders not complying with FAR requirements.

³ The Guidebook for the Acquisition of Services,” July 20, 2011, updates the Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense,” December 2000. We used both guidebooks since the update occurred during the timeframe of our task order sample. The guidebooks provide suggestions on writing and reviewing PWSs.

Outcomes Not Always Measurable

Contracting officers awarded 1 task order that did not have any outcomes and awarded 24 task orders that did not always have measurable outcomes. FAR Part 2, “Definitions of Words and Terms,” states that PWSs shall contain measurable outcomes, and FAR part 37 states that performance-based contracts for services shall include measurable performance standards (such as quantity, timeliness, and quality) and requires contracts to have clearly defined and appropriate PWSs, ensuring performance meets the agency’s requirements. Contract H92222-10-D-0018, task order 13 did not list any outcomes to be provided by the contractor. The task order only identified personnel capabilities and minimum skills necessary to perform specific functional requirements. The task order should have contained the number of personnel hours required to perform a specific function, identified a deliverable product, and identified a timeframe for delivering the product. The following are examples from task orders without measurable outcomes.

- Contract H92222-10-D-0017, task order 5 contained outcomes for electronic resumes, financial/budget guidance and procedures, reviews of complex regional documents, and cultural advice. However, some of the outcomes were not measurable in terms of quantity or how USSOCOM would assess quality of the required content.
- Contract H92222-10-D-0017, task order 11 stated, “outcomes vary dependent on mission requirement changes and may include items such as; terrorism threat level assessments, group or individual profiles, threat warnings, link analysis, special assessments, and forecasts.” However, “may include items such as” does not identify how many (quantity) and when (delivery date) those outcomes are required.
- Contract H92222-10-D-0018, task order 4 referred to outcomes as “outcomes can include, but are not limited to the following.” The outcomes included tailored information or decision briefings or papers, discussion papers, issue specific studies, official messages, and operational and administrative calendars. However, some of the outcomes were not measurable in terms of quantity or how USSOCOM would assess quality of the required content.

See Appendix C for the list of 24 task orders that did not always have measurable outcomes and 1 task order that did not have any outcomes. USSOCOM officials should require a review of existing task orders for unmeasurable outcomes and modify or terminate task orders not complying with FAR requirements.

Task Orders May Have Included Inherently Governmental Duties

Contracting officers awarded nine task orders that may have included inherently

Contracting officers awarded nine task orders that may have included inherently governmental duties.

governmental duties. Special Operations Federal Acquisition Regulations Supplement (SOFARS) Subpart 5607.5, April 2008 states, “contracting officers shall ensure that each

contracting requirement for services is accompanied by a written determination from the requiring activity that none of the functions contained in the requirement are inherently governmental, as defined in FAR 7.503.” FAR Subpart 7.5, “Inherently Governmental Functions,” states contracts shall not be used for the performance of inherently governmental functions. However, 9 of the 28 task orders we reviewed may have included inherently governmental duties as defined by FAR subpart 7.5. For example,

- contract H92222-10-D-0018, task orders 3 and 4 required the preparation of congressional testimonies. During the audit, the COR stated the inherently governmental language was erroneously included in the two task orders and took action to remove the inherently governmental language. However, the contracting officers did not make a determination as to whether the contractor was performing the inherently governmental functions listed in the PWSs.
- contract H92222-10-D-0018, task order 7 stated the contractor would:
 - negotiate, administer, extend, and prepare termination documents and renegotiate contracts;
 - formulate and coordinate procurement proposals; direct and coordinate activities of workers engaged in evaluating proposals; evaluate or monitor contract performance to determine necessity for amendments or extensions of contracts and compliance to contractual obligations; approve or reject requests for deviations from contract specifications and delivery schedules; arbitrate claims or complaints occurring in performance of contracts; analyze price proposals, financial reports, and other data to determine reasonableness of prices; and may serve as liaison officer to ensure fulfillment of obligations by contractors.

The above are duties reserved for DoD contracting personnel that were listed in the PWS and should not be delegated to contractor personnel. In addition, DoD OIG Report No. D-2009-083, “Logistics Support Contracting for the United States Special Operations Command,” May 28, 2009, recommended USSOCOM develop internal controls to ensure contractors do not perform inherently governmental functions. Therefore, based on the previous report recommendations and the continued inclusion of inherently governmental duties, USSOCOM officials should implement procedures to review task order compliance with Federal and DoD regulations for inherently governmental functions. Appendix B contains the nine task orders that may require contractors to perform inherently governmental duties.

Task Orders Contained Elements of a Personal Service Contract

Contracting officers awarded 24 task orders, valued at approximately \$149.5 million, that contained elements of a personal service contract. FAR 37.103, “Contracting officer responsibilities,” states that contracting officers must review contract requirements for the potential of personal service job functions as part of the contracting process.

However, 24 task orders contained at least 4 of the 6 personal service elements identified in FAR 37.104. For example, contract H92222-10-D-0018, task order 0003 contained the following personal service elements:

- performance of work by contractor on Government site;
- principal tools and equipment are furnished to the contractor by the Government;
- comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel; and
- service provided can reasonably be expected to last beyond 1 year.

FAR 37.104 further states that personal services contracts are characterized by the employer-employee relationship created between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services. Table 1 identifies 5 of the 24 task orders with requirements that could create an employer-employee relationship. In addition, USSOCOM technical representatives stated they assigned tasks directly to contractors and that contractors were not required to perform outcomes listed in the PWS, instead contractors answered requests for information on a daily basis or assigned tasks based on workloads. Appendix C identifies the 24 task orders that contained at least four elements of a personal service contract. USSOCOM officials should implement procedures to review task order compliance with Federal and DoD regulations for personal services.

Table 1. Task Order Requirements That Could Create an Employer-Employee Relationship

Contract	Task Order	Elements of a Personal Service
H92222-10-D-0017	5	“provide subject matter experts (SMEs) to augment manpower for JMISC [Joint Military Information Support Command] activities across all organizational functions. Many contract positions will fill roles within the JMISC Joint Table of Distribution that remain unfilled or will support newly established operational requirements.”
H92222-10-D-0018	7	“Per direction and coordination from the Government, [the contractor] shall also be responsible for entering data and retrieving data and information, as well as regularly scheduled and ad hoc data extraction and information/reports”
	13	“provide subject matter experts (SME) to augment manpower for J7/9 [Training, Knowledge, and Futures] activities across all organizational functions.”
	28	“provide contractor manpower augmentation to the staff of the J2X Division and the J2-IP [International Programs] Division.”
	34	“provide contractor manpower augmentation to the staff of the J2 JIC OS [Open Source Intelligence] Branch in the form of intelligence related support for the OSINT [open source intelligence] program.”

Task Order Terms Not Well Defined and the Problem Was Previously Reported

Task order terms were not well defined and were previously reported as a problem. FAR part 2 states that task order PWSs must contain clear, specific, and objective terms with measurable outcomes. However, contracting officers stated that USSOCOM personnel preferred PWSs with unclear requirements to maintain flexibility and to support emerging tasks. Further, the Office of Defense Procurement and Acquisition Policy (DPAP) is responsible for conducting peer reviews for service acquisitions with an estimated value of over \$1 billion. DPAP officials informed USSOCOM contracting officials in memorandum, "Review of Global Battlestaff and Program Support (GBPS) Solicitation," September 7, 2009, that the GBPS contract contained tasks that were not linked to specific outcomes. USSOCOM officials agreed and revised the applicable section of the GBPS contract to address the concerns of DPAP officials. However, USSOCOM officials awarded GBPS task orders with unclear requirements. Although USSOCOM personnel may have preferred flexible task orders to support emerging tasks, contracting officers must adhere to the FAR and issue task orders with clear, specific, and measurable outcomes. Therefore, USSOCOM officials should implement controls to ensure task orders contain clearly defined performance work statements.

Task Orders Not Reviewed for Inherently Governmental Functions and Personal Service Contract Elements

A contracting officer stated because the basic GBPS contract was deemed nonpersonal in nature and the contract was reviewed for inherently governmental functions, subsequent task orders were not required to be reviewed for personal services or inherently governmental functions. In addition, issues with inherently governmental functions and personal service contract elements were identified in DCMA memorandum, "Declination of delegation for contract administration for contract numbers H92222-10-D-0016, H92222-10-D-0017, H92222-10-D-0018, H92222-10-D-0019," August 2, 2011. The Memorandum states that DCMA does not generally administer contracts for "personnel support services." The Memorandum further states that DCMA does not accept delegations when the contractor is integrated into government operations and the contracted work is not severable or separated from organic or government performed work. In addition, DoD OIG Report No. D-2009-083, "Logistics Support Contracting for the United States Special Operations Command," May 28, 2009, recommended the development of internal controls and standard operating procedures to ensure contractors do not perform inherently governmental functions. USSOCOM officials responded stating an analysis is performed every other year for commercial activities and they were updating the Inherently Governmental Commercial Activities review for FY 2009. USSOCOM officials also stated that contracting officers will ensure that each contracting requirement for services is accompanied by a written determination from the requiring activity that none of the functions are inherently governmental. Although USSOCOM officers took action to address the recommendations and applied the procedures to the

basic GBPS contract, they did not apply the procedures to the task orders for inherently governmental functions and personal services job elements. Consequently, USSOCOM officials need to review task orders for FAR compliance and, if appropriate, modify or terminate task orders that violate FAR requirements for inherently governmental functions and personal service elements.

Obtaining the Best Value for Contracted Services Requires Continual Focus

The lack of appropriate contract award and administration put USSOCOM at risk of not getting the best value for GBPS services and improperly executing future task order option years, valued at \$206 million. Specifically, contracting officers increased the risk of contractors not performing effectively and not being able to hold contractors accountable for services that did not meet the agencies' needs and intended task order requirements. Further, for task orders containing inherently governmental duties and elements of a personal services contract, the contracting officer increased the risk of potential waste and abuse and the award of future task orders that are not in the best interest of USSOCOM.

Conclusion

Contracting officers did not adhere to FAR requirements for task order administration. Specifically, contracting officers did not follow FAR subparts 2.1 and 16.5 for task orders to contain clearly defined performance work statements, FAR subpart 37.6 for measureable outcomes, FAR subpart 7.5 for inherently governmental duties, FAR subpart 37.1 for personal services job elements, FAR part 15 for determination of fair and reasonable prices for modifications over \$700,000 (Finding B), and FAR subpart 32.9 for payments to be made based on receipt of proper invoice and satisfactory contract performance (Finding C). In addition, contracting officers did not take appropriate action to address issues identified in recommendations made in DoD OIG reports and DPAP peer reviews. By not addressing previously identified issues or implementing recommendations, USSOCOM officials increased the overall risk to the GBPS contracting processes. Therefore, USSOCOM officials should initiate a review of contracting officers' adherence to FAR requirements for GBPS task order administration and initiate the appropriate corrective action.

Management Comments on the Finding and Our Response

The Director, Special Operations Research, Development, and Acquisition Center, provided comments on Finding A. See Appendix D for the Director's comments on the finding and our response.

Recommendations, Management Comments, and Our Response

A. We recommend that the Director, Special Operations Research, Development, and Acquisition Center:

1. Implement controls to ensure task orders contain clearly defined performance work statements and comply with Federal and DoD regulations for inherently governmental functions and personal services job elements.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated USSOCOM believes adequate controls exist. Further, the Director stated the GBPS contract prohibits the Government and the contractor from engaging in personal services, except when a task order expressly contains requirements establishing personal services. Additionally, the Director stated the contracting officer takes immediate action to remedy any situation that might have the appearance of (or the contractor is actually conducting) inherently governmental or personal services activities. The Director stated, regarding clearly defined work statements, USSOCOM is conforming to FAR and DoD regulations for PWSs to contain outcomes. Task orders contain the offeror's PWS in response to the Government's Statement of Objectives, and the contractor is contractually obligated to meet the PWS requirements. In addition, the Director stated the task orders also contain a Service Delivery Summary and USSOCOM officials use the Service Delivery Summary to measure the contractor's performance when fulfilling the PWS. Finally, the Director stated that USSOCOM officials completed actions to review the GBPS task orders and remove language that indicates the contractor is to perform inherently governmental or personal services. USSOCOM officials modified the task orders accordingly. The Director stated that USSOCOM will initiate and complete a review of all GBPS task orders to ensure current and future task orders are compliant with FAR Subpart 2.1, "Definitions," and Subpart 16.5, "Indefinite Delivery Contracts." The estimated completion date is April 2013.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

2. Perform a review of existing task orders for unclear requirements and unmeasureable outcomes and modify or terminate task orders not complying with Federal Acquisition Regulation subparts 2.1, 16.5, and 37.6 requirements.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated the PWS contains requirements that the contractor proposed and the contractor is responsible for performing. Additionally, the Director stated that USSOCOM GBPS task orders comply with FAR 37.602. Further, USSOCOM officials execute contracts with flexibility embedded to ensure the contractor can provide the required services to support the mission of an evolving, flexible Command that is challenged with changing priorities. According to the Director, USSOCOM officials use the Service Delivery Summary to measure the contractor's performance. USSOCOM planned to initiate and complete a review of all GBPS task orders to ensure current and future task orders are compliant with FAR Subpart 37.6, "Performance-Based Acquisition," and, if appropriate, take any action warranted. The estimated completion date is April 2013.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

3. Perform a review of task orders to determine if contractors are performing inherently governmental duties and modify or terminate task orders not complying with Federal Acquisition Regulation subpart 7.5 requirements.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated, with one notable exception, the sample population of task orders that the DoD OIG reviewed contained language that was interpreted by the audit team as requiring the contractor to engage in inherently governmental functions. According to the Director, the exception was a requirement to draft responses to congressional correspondence. The Director further stated the questionable language contained in the other task orders erroneously created this misinterpretation. Finally, the Director stated USSOCOM officials completed actions to review the GBPS task orders and remove language that indicates the contractor is to perform inherently governmental or personal services. USSOCOM plans to initiate and complete a review of all GBPS task orders to ensure current and future task orders are compliant with FAR Subpart 7.5, "Inherently Governmental Functions," and, if appropriate, take any action warranted. The estimated completion date is April 2013.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

4. Perform a review of task orders to determine if contractors are performing personal services and modify or terminate task orders not complying with Federal Acquisition Regulation subpart 37.1 requirements.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated that, except as expressly stated as a personal service entered into using statutory authority granted to USSOCOM, GBPS task orders are a means of acquiring by contract the services of contractors to either increase USSOCOM's capability or capacity.

Additionally, the Director stated that all nonpersonal service task orders contain a PWS or Statement of Work and the contractor's employees are, either by the task order's terms or the manner of its administration, not subject to the supervision or control prevailing in relationships between the Government and its employees. Therefore, by definition, the task orders are nonpersonal in nature as defined at FAR subpart 37.101. Additionally, GBPS contract clause H.6 language states, "[t]he parties recognize and agree that no employer-employee relationships exist or will exist under the contract between the Government and Contractor and/or between the Government and the Contractor's employees."

Further, the Director stated should the contracting officer become aware of any situation that might have the appearance of (or the contractor is actually conducting) inherently governmental or personal services activities, corrective action would be taken immediately. Corrective actions range from a written warning to revocation of the COR's appointment to task order termination as necessitated by the severity of the action(s).

Our Response

Comments from the Director were responsive. USSOCOM plans to initiate and conduct a review of the GBPS task orders in accordance with the referenced FAR requirements, to include subpart 37.1 for personal services job elements and subpart 7.5 for inherently governmental duties. Therefore, no further comments are required.

5. Initiate a review of contracting officers' adherence to Federal Acquisition Regulation requirements and if appropriate, take any actions warranted by the review. Specifically, review Federal Acquisition Regulation procedures contained in:

a. subparts 2.1 and 16.5 for task orders to contain clearly defined performance work statements,

- b. subpart 37.6 for measureable outcomes,
- c. subpart 37.1 for personal services job elements,
- d. subpart 7.5 for inherently governmental duties,
- e. part 15 for determination of fair and reasonable prices for modifications over \$700,000 (Finding B), and
- f. subpart 32.9, for payments to be made based on receipt of proper invoice and satisfactory contract performance (Finding C).

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with Recommendations A.5.a through A.5.f. The Director stated USSOCOM will initiate and complete a review of all GBPS task orders to ensure current and future task orders are compliant with the referenced FAR requirements. The estimated completion date is April 2013.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

Finding B. Modifications Awarded Without Price Reasonableness Determinations

Contracting officers awarded 20 modifications, under 10 task orders, totaling approximately \$38.8 million, without a determination of fair and reasonable price. The 20 modifications, each valued at more than \$700,000, increased the overall cost of the 10 task orders from approximately \$35.6 million to \$74.4 million. A contracting officer stated this occurred because time constraints prevented the staff from documenting their reviews of fair and reasonable price analyses. Furthermore, USSOCOM officials did not take action to address recommendations made in DoD OIG Report No. D-2009-102 to improve controls over its contracting processes. The recommendations requested USSOCOM officials to implement FAR procedures for performing and documenting fair and reasonable price determinations.

As a result, USSOCOM may not have received fair and reasonable prices for contracted services. Without proper price reasonableness analyses, USSOCOM could not determine if the best value was received for GBPS contracted services. For example, a task order containing services, valued at approximately \$0.9 million, for a 10-month period of performance was modified to add an additional 50 days of services at the cost of \$1.9 million without proper price reasonableness analyses.

Price Reasonableness Guidance

According to FAR Subpart 15.4, “Contract Pricing,” to determine if proposed modification prices are fair and reasonable the contracting officer must obtain certified cost or pricing data and a Certificate of Current Cost or Pricing Data from the contractor for modifications over \$700,000. In addition, the contracting officer must include a Certificate of Current Cost or Pricing Data in the contract file and document the extent of reliability placed on the certified cost or pricing data submitted.

Contracting Officers Did Not Determine Fair and Reasonable Price for Modifications

Contracting officers issued 20 modifications, under 10 task orders, totaling approximately \$38.8 million, without a determination of fair and reasonable price in accordance with FAR subpart 15.4. We requested contracting officers provide price reasonableness analysis and determination documentation for the 20 modifications over \$700,000 in our sample. Contracting officers were unable to provide the documentation. Therefore, USSOCOM could not determine if the best value was received for the 20 modifications. Table 2 (page 16) lists the modifications over \$700,000, the original price of the task order, and the amount of the modification.

The modification amounts shown in Table 2 represent increases to the original value of the task orders. For example, modifications issued for contract H92222-10-D-0019, task order 9 significantly exceeded the price of the original value of the task order. The 20 modifications increased the overall value of the 10 task orders by approximately 109 percent from \$35.6 million to \$74.4 million.

Table 2. Number and Value of Modifications Over \$700,000

Contract Number	Task Order	Number of Modifications Over \$700,000	Value of Task Order (millions)	Value of Modifications (millions)	Total Value of Task Orders
H92222-10-D-0016	1	1	\$7.9	\$0.7	\$8.6
H92222-10-D-0017	7	1	5.8	1.1	6.9
	11	1	0.1	1.1	1.2
H92222-10-D-0018	3	4	4.9	8.3	13.2
	4	3	3.0	7.3	10.3
	12	1	1.6	2.6	4.2
	25	1	5.0	3.3	8.3
	26	1	6.6	0.9	7.5
	34	2	0.5	1.7	2.3
H92222-10-D-0019	9	5	0.2	11.7	11.9
Total		20	\$35.6	\$38.8	\$74.4

Note: Because of rounding, columns may not sum. The value of contracts H92222-10-D-0017, task order 7 and H92222-10-D-0018, task orders 3 and 4 includes the cost for exercised option year one.

Time Constraints Should Not Prevent Documenting Price Reasonableness Determinations

A contracting officer stated that time constraints prevented the staff from documenting their reviews of the fair and reasonableness price analyses for task orders over \$700,000. We requested USSOCOM contracting officers provide documentation and evidence of price reasonableness analyses for the 20 modifications reviewed. However, contracting officers stated that formal documentation of cost or pricing data analyses was not available for the modifications. A contracting officer also stated that the staff reviewed independent Government cost estimates provided by the requesting activity and other documents but they did not document the analysis. Contracting officers should not issue modifications without conducting price reasonableness determinations to ensure fair and reasonable prices are received for contracted services. Contracting officers should also retain, as part of the official contract file, supporting documentation used to make price reasonableness determinations. In addition, USSOCOM officials should establish metrics to assess whether contracting officers are performing price reasonableness determinations for the GBPS contract.

Prior Problems Determining Fair and Reasonable Prices Were Not Corrected

USSOCOM officials did not take appropriate actions to address prior recommendations to improve and correct controls over their contracting processes, especially fair and reasonable price determinations. Although recommended in a prior audit report, USSOCOM officials did not adequately implement FAR procedures to perform and document fair and reasonable price determinations. The DoD OIG issued

USSOCOM officials did not take appropriate actions to address prior recommendations to improve and correct controls over their contracting processes.

Report No. D-2009-102, "Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command," September 18, 2009, stating that USSOCOM contracting officers did not perform or document price reasonableness determinations in accordance with the FAR. Further, the report stated USSOCOM internal controls were not adequate to ensure that contracting officials approved required contracting documentation or that the contract files contained the supporting documentation of the price reasonableness decisions. The report recommended the Commander, USSOCOM, improve contracting internal controls by emphasizing to contracting personnel that they comply with the FAR when performing and documenting price reasonableness determinations, as well as require periodic reviews of contract files to determine whether they contain the required documentation and the necessary signatures.

Based on recommendations in DoD OIG Report No. D-2009-102, USSOCOM officials stated they took actions to resolve the issues. Specifically, they:

- provided formal training on multiple pricing topics,
- established metrics to provide an aggregate assessment of each office's compliance with the FAR regarding documenting fair and reasonable price determinations,
- updated the SOFARS to include independent contract file reviews, and
- conducted an internal Directorate of Procurement Management Review (PMR).

We requested documentation to support these actions. USSOCOM officials responded and stated they provided training in FY 2010 for fair and reasonable price determinations, SOFARS has language requiring independent contract file reviews, and USSOCOM performs PMRs. However, USSOCOM officials stated no metrics have been established to assess compliance with FAR requirements to perform fair and reasonable price determinations. Further, USSOCOM provided a copy of the FY 2010 PMR. However, according to the PMR results, contract modifications are still an area of concern for contract administration. Therefore, USSOCOM should establish an annual PMR of GBPS contract procedures to assess contract records and ensure task order files contain supporting documentation as required by FAR part 15.

USSOCOM May Not Be Receiving the Best Value

USSOCOM may not have received fair and reasonable prices for required services. Without proper price reasonableness analyses, contracting officers cannot ensure the GBPS contracted services provided the best value. For example, a contracting officer modified a task order on September 20, 2010, to add a 10-month period of performance study, valued at approximately \$0.9 million. However, a contracting officer issued a modification on September 30, 2010, adding 50 days to the period of performance at a cost of approximately \$1.9 million without a proper price reasonableness analyses. Until FAR requirements for fair and reasonable price analyses are implemented, USSOCOM officials could not ensure they obtained the best value on negotiated contracts. Therefore, USSOCOM officials should implement controls to verify contracting personnel adhere to FAR subpart 15.4 and perform price analysis for modifications over \$700,000.

Conclusion

Contracting officers did not adhere to FAR subpart 15.4 requirements for performing determinations of fair and reasonable prices for modifications over \$700,000. In addition, the Commander, USSOCOM, did not take appropriate action to address issues or recommendations regarding price reasonableness determinations identified in DoD OIG Report No. D-2009-102. By taking actions to correct previously identified issues and implementing recommendations, USSOCOM officials may mitigate the risk of not receiving the best value for GBPS contracted services.

Management Comments on the Finding and Our Response

The Director, Special Operations Research, Development, and Acquisition Center, provided comments on Finding B. See Appendix D for the Director's comments on the finding and our response.

Recommendations, Management Comments, and Our Response

B. We recommend that the Director, Special Operations Research, Development, and Acquisition Center:

1. Implement controls to verify contracting personnel adhere to Federal Acquisition Regulation Subpart 15.4 and perform price analysis for modifications over \$700,000.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director agreed with the recommendation and stated USSOCOM officials completed actions to address this recommendation. The Director stated that contracting officers are adhering to FAR subpart 15.4 requirements and performing price analysis for task order modifications, including initial task order award.

Our Response

Comments from the Director were responsive. No further comments are required.

2. Retain, as part of contract file, supporting documentation used to make price reasonableness determinations.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated USSOCOM officials will include documentation in the task order file supporting the pricing determinations for modifications as the documentation is generated. Additionally, the Director stated actions are ongoing until all task orders expire.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

3. Establish metrics to assess whether contracting officers are performing price reasonableness determinations for the Global Battlestaff and Program Support contract.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated that metrics are not necessary to determine whether contracting officers are performing price reasonableness. Further, the Director stated USSOCOM officials will generate documentation (reviewed by the supervisory contracting officer) to ensure compliance and retain with the documentation generated to award the modification. Additionally, the Director stated actions will be ongoing until all task orders expire.

Our Response

Comments from the Director were nonresponsive. The Director disagreed that metrics are needed to assess whether contracting officers are performing price reasonableness determinations. We believe USSOCOM needs to establish metrics to periodically monitor and assess compliance with price reasonableness requirements. Therefore, we request the Director, Special Operations Research, Development, and Acquisition Center, provide additional comments by May 24, 2013.

4. Require an annual Procurement Management Review of the Global Battlestaff and Program Support contract procedures and records.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated USSOCOM officials will conduct additional reviews in response to other recommendations in this report. The Director further stated USSOCOM officials implemented new processes and are conducting internal and peer reviews. Also, the Director stated USSOCOM officials will conduct PMRs in accordance with established schedules. Finally, the Director stated the mission and limited resources do not allow USSOCOM to support annual PMRs on the GBPS contracts.

Our Response

Comments from the Director were partially responsive. We acknowledge the Command's efforts for conducting additional reviews, implementing new processes, and conducting internal peer reviews and PMRs in accordance with established schedules. During our audit, USSOCOM officials stated they conduct PMRs every 3 years. However, USSOCOM officials do not conduct PMRs for each contracting office. For example, in 2011, USSOCOM officials performed five PMRs; none of which were conducted for contracting activities in USSOCOM headquarters.

Although the Director stated that USSOCOM officials will conduct additional reviews and provided examples of the review types, the Director did not specifically state the frequency of each review or a timeline for completion. Therefore, we request the Director, Special Operations Research, Development, and Acquisition Center, provide additional comments by May 24, 2013.

Finding C. Improvements Needed in GBPS Contract Payment Certification Process

Contracting officers did not validate that contractors were entitled to approximately \$50.9 million paid on GBPS task orders between September 1, 2011, and March 31, 2012. Specifically, contracting officers did not verify that contractor services were performed or that services received from the contractor met contract requirements before certifying invoices for payment. This occurred because contracting officers approved “scheduled interval” payments on an exception basis. Specifically, contracting officers certified “invoice-2-in-1”⁴ (invoice) payments without validating services were received and conformed to contract requirements. In addition, the contracting office certified invoices for payment in WAWF after DCMA officials relinquished administrative contracting officer duties in August 2011. As a result, contracting officers could not ensure that the Government received services for which it paid.

Use of Electronic Contract Payments

Public Law 106-398, “National Defense Authorization, Fiscal Year 2001,” October 30, 2000, requires claims for contract payments to be submitted and processed in electronic format. Under Defense Federal Acquisition Regulation Supplement 232.70, contractors are required to submit payment requests and receiving reports in electronic form through WAWF. According to the GBPS contract, it is mandatory for all contractors to submit invoices and receiving reports through WAWF before payment.

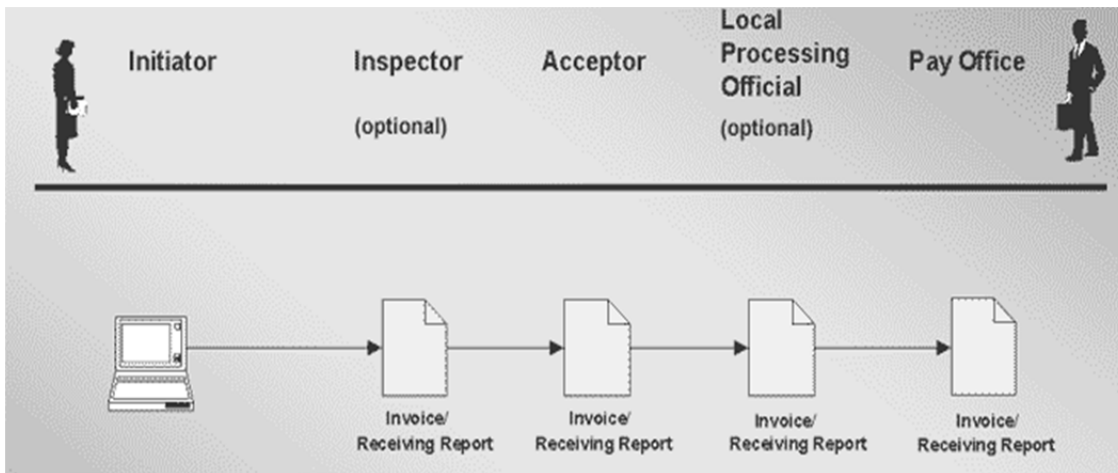
WAWF is an interactive Web-based application that allows contractors to electronically submit invoices and receiving reports for Government inspection, acceptance, and electronic payment. The contractor submits an invoice in WAWF to a designated Government representative for acceptance. A Government representative verifies contractor performance, validates the accuracy of invoice amounts, and submits the invoice for payment. The Government representative then certifies that goods and services received from the contractor met contract requirements and the invoice is valid for payment. For GBPS task orders,

- the contractor submits an invoice document in WAWF,
- WAWF creates a single invoice/receiving report that is routed from the contractor to contracting officers,
- contracting officers certify acceptance of the invoice, and
- the invoice is routed to the payment office.

⁴ The “invoice 2-in-1” documents are used when a contract for services requires invoice acceptance before submission for payment. The contractor creates an “Invoice 2-in-1” document and submits the invoice for payment in the WAWF system. A Government representative certifies acceptance of the contractor services on the “invoice 2-in-1” document.

The flowchart below illustrates the general WAWF process.

Figure. WAWF Invoice Payment Process



Source: Washington Headquarters Services Presentation.

Contracting Officers Paid Contractors Without Validating Payments

Contracting officers did not validate that contractors were entitled to approximately \$50.9 million paid on GBPS task orders between September 1, 2011, and March 31, 2012. FAR Subpart 32.9, “Payment Documentation and Process,” states that a

Contracting officers did not validate that contractors were entitled to approximately \$50.9 million paid on GBPS task orders.

payment will be made based on receipt of proper invoice and satisfactory contract performance. According to WAWF guidance, a person with inspector status inspects the quality of contracted goods or services and a person with acceptor status accepts goods or services on behalf of the Government. During the invoice certification

process, the contracting officer certified that an inspection, “has been made by me or under my supervision and they conform to contract.” However, contracting officers did not have documentation to verify that 394 of 403 invoices submitted by GBPS prime contractors between September 1, 2011, and March 31, 2012, met contract requirements. Specifically, they did not validate whether contracted services were received or conformed to contract requirements before certifying invoices for payment.

Contracting Officers Improperly Approved Invoices for Payment

Contracting officers did not properly approve invoices for payment. This occurred because contracting officers approved “scheduled interval” payments on an “exception basis.” Specifically, contracting officers approved invoice payments unless a COR notified the contracting officer that services had not been accepted and no payment should be made to the contractor. DoD Regulation 7000.14 R, “DoD Financial Management Regulation,” volume 10, chapter 7 states contract payments must be based upon acceptance of goods or services as authenticated by the signature of the Government official. In addition, Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum dated March 29, 2010, required the CORs to inspect and accept services during contract performance and review and validate that contractor payment requests are commensurate with performance. However, the contracting officer certified invoices for GBPS task orders in support of services performed in the United States and overseas without contacting CORs to determine if the invoices were valid for payment. With the complexity of the GBPS task orders and the number of contractors performing services at multiple locations, it is imperative that USSOCOM officials validate the accuracy of contractor invoices before certifying payment. USSOCOM officials should implement procedures to verify contractor performance and validate the accuracy of invoice amounts before certifying invoices for payment. Those procedures must be performed by a Government representative with knowledge that services conform to applicable task order quality and quantity requirements.

DCMA Relinquished the Administrative Contracting Officer’s Responsibilities

FAR Subpart 42.3, “Contract Administration Office Functions,” states that the CAO is responsible for contract administration functions, such as review, approve, or disapprove the contractor’s requests for payments under the performance-based payments clauses. The contracting office certified invoices for payment in WAWF after DCMA officials relinquished contract administration duties in August 2011. Specifically, USSOCOM officials delegated and DCMA officials accepted CAO responsibilities for the GBPS contract in April 2010. As the CAO, DCMA officials performed formal acceptance of the GBPS contract services and certified contractors’ invoices for payment in WAWF. On August 2, 2011, DCMA issued a memorandum relinquishing the GBPS CAO responsibilities. Among other reasons, the memorandum stated that the work was not within the scope of DCMA’s “core mission.” Consequently, the contracting office certified GBPS invoices in WAWF. A contracting officer stated that they were certifying the invoices in WAWF pending CORs training. The contracting officer stated that CORs were not trained to certify contractor invoices in WAWF for the GBPS contract. Consequently, contracting officers need to train CORs to certify contractor invoices in WAWF.

Action Needed to Improve Payment Certification Process

USSOCOM contracting officers did not ensure contract services were received and conformed to contract requirements. Until a proper GBPS payment certification process is implemented, USSOCOM cannot validate that the Government received services for which it paid. By establishing a proper payment certification process, USSOCOM officials can assure that services received conformed to contract requirements and contractors are entitled to payments.

Conclusion

Contracting officers did not adhere to FAR subpart 32.9, which requires payments to be made based on receipt of proper invoice and satisfactory contract performance. Specifically, contracting officers did not validate whether contracted services were received or conformed to contract requirements before certifying invoices for payment. Implementing an invoice certification payment process for the GBPS contract will allow USSOCOM to verify that contracted services were received before making payments to contractors.

Management Comments on the Finding and Our Response

The Director, Special Operations Research, Development, and Acquisition Center, provided comments on Finding C. See Appendix D for the Director's comments on the finding and our response.

Recommendations, Management Comments, and Our Response

C. We recommend that the Director, Special Operations Research, Development, and Acquisition Center:

1. Implement procedures for the contracting officer or the contracting officer representatives to verify contractor performance and validate contractor payment requests before certifying invoices for payment.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated contracting officers are conducting an aggressive program to train CORs on the proper use of WAWF to process invoices and ensure compliance with their fiduciary responsibility to ensure payment is made only for services rendered and to which the contractor is entitled. Estimated completion date is March 15, 2013.

Our Response

Comments from the Director were partially responsive. We believe the ongoing initiatives to train CORs on the proper use of WAWF are partially responsive to the

recommendation. However, the Director did not address the procedures required in the recommendation. Until the CORs are fully trained to certify invoices in WAWF, contracting officers should ensure payments are based on satisfactory contract performance before certifying payments in WAWF. Therefore, we request the Director, Special Operations Research, Development, and Acquisition Center, provide additional comments by May 24, 2013.

2. Direct contracting officers to train the Global Battlestaff and Program Support contracting officer's representatives on the Wide Area Work Flow invoice certification process.

Director, Special Operations Research, Development, and Acquisition Center Comments

The Director did not agree or disagree with the recommendation. The Director stated contracting officers are conducting an aggressive program to train CORs on the proper use of WAWF to process invoices and ensure compliance with their fiduciary responsibility to ensure payment is made only for services rendered and to which the contractor is entitled. Estimated completion date is March 15, 2013.

Our Response

Comments from the Director were responsive. Although the Director did not agree or disagree with the recommendation, the actions described in his response meet the intent of our recommendation. No further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from October 2011 through September 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted the audit at the USSOCOM headquarters (MacDill Air Force Base) in Tampa, Florida. We reviewed policies and procedures related to the administration of task orders awarded under the GBPS contract. Specifically, we obtained and reviewed applicable sections of the FAR, DoD policies and regulations, and the SOFARS. In addition, we:

- obtained and reviewed the GBPS contract, prime vendor contracts, task orders and modifications from the Electronic Document Access (EDA) and the USSOCOM GBPS Contract Internet Portal;
- identified modifications that increased the cost of task orders;
- conducted an analysis of task orders with cost increases and the corresponding modifications;
- identified roles and responsibilities for GBPS contract administration, to include the procuring contracting officer, the CORs, contracting officer technical representative, and USSOCOM officials providing oversight of task orders; and
- conducted a review on USSOCOM procedures for paying invoices in WAWF.

We selected a nonstatistical sample from the 73 GBPS contract task orders. Specifically, we selected 28 task orders with modifications that increased the cost of the task orders. We selected the sample based on the risk associated with high dollar values and the high volume of modifications. Table A-1 contains a list of the 28 task orders with modifications that increased the cost of the task orders.

Table A-1. Value of Sampled of Task Orders and Modifications

Contract	Total Number of Task Orders	Original Value	Modification Amount	Current Value
H92222-10-D-0016	4	\$40,916,834	\$1,839,808	\$42,756,642
H92222-10-D-0017	4	20,493,483	3,710,918	24,204,401
H92222-10-D-0018	15	56,055,877	28,310,883	84,366,760
H92222-10-D-0019	5	6,347,009	13,837,490	20,184,499
Total	28	\$123,813,203	\$47,699,098	\$171,512,302

Note: Because of rounding, columns may not sum.

During fieldwork, we reviewed selected aspects of the GBPS task order award and administration processes. Specifically, we obtained and reviewed documentation to determine whether USSOCOM personnel maintained documentation to support task order award decisions, competed the awarded task orders among the four prime contractors, conducted a personal services determination, and an inherently governmental review. We also requested documentation to determine whether USSOCOM personnel conducted fair and reasonable price determinations for task order modifications.

In addition, we selected a second nonstatistical sample for review that consisted of 20 task order modifications with a cost greater than \$700,000. We selected this sample to determine whether USSOCOM conducted fair and reasonable price determinations for modifications valued over \$700,000 as required by FAR 15.4, “Contract Pricing.” Table A-2 contains a list of the 20 task order modifications with a cost greater than \$700,000.

Table A-2. Modifications Greater Than \$700,000

Contract	Task Order	Modification Number	Value of Modifications
H92222-10-D-0016	1	4	\$744,938
H92222-10-D-0017	7	6	1,103,361
	11	1	1,094,028
H92222-10-D-0018	3	6	1,193,537
		8	3,494,429
		10	1,699,513
		14	1,903,169
	4	3	3,951,056
		4	2,592,493
		11	769,005
	12	2	2,628,162
	25	6	3,226,643
	26	9	927,687
	34	3	738,537
		4	992,743
H92222-10-D-0019	9	15	1,482,053
		17	2,753,740
		18	1,876,201
		20	3,616,137
		21	1,999,956
Total			\$38,787,387

We conducted interviews with personnel from the USSOCOM Special Operations Research, Development, and Acquisition Center, Directorate of Procurement and the Center for Force Structure, Requirements, Resources, and Strategic Assessment Directorate, to get an understanding of their roles, responsibilities, and procedures, and compared them to the applicable guidance listed above. We also gained access to the

USSOCOM GBPS portal to obtain and review the following documents and forms that were used to support the GBPS contract task orders and modifications in our sample:

- Task order proposals from each contractor,
- Independent Government Cost Analyses,
- Business Clearance Memorandums,
- Task Order and Modification Justifications,
- Task Order and Modification Approvals, and
- Task Order and Modification Performance of Work Statements.

To review the GBPS contract payment certification process, we requested and reviewed all 403 GBPS contractor invoice-2-in-1 documents submitted for payment from September 1, 2011, through March 31, 2012. We reviewed the invoice-2-in-1 documents to determine whether WAWF was used to certify and document contracting officers' inspection and acceptance of contractor services.

Use of Computer-Processed Data

We relied on computer-processed data from the EDA website, the USSOCOM GBPS Contract Internet Portal, and WAWF. EDA is a Web-based system that provides secure online access, storage, and retrieval of contracts and contract modifications to authorized users throughout the DoD. USSOCOM GBPS Contract Internet Portal is the official repository for the GBPS contract file administered by USSOCOM Special Operations Research, Development, and Acquisition Center. We obtained GBPS contract documentation from EDA and the USSOCOM GBPS Contract Internet Portal. We reviewed the documentation to determine whether USSOCOM contracting officers maintained adequate support for GBPS task order decisions. We compared the documents retrieved from EDA to copies obtained from USSOCOM GBPS Contract Internet Portal and verified the contract documentation was accurate and complete to answer our audit objective. WAWF is an interactive Web-based application that allows contractors to electronically submit invoices and receiving reports for Government inspection, acceptance, and electronic payment. To assess the reliability of WAWF invoice data, we compared the data to task order scheduled interval payments and interviewed agency officials knowledgeable about the data. We determined that data from EDA, the USSOCOM GBPS Contract Internet Portal, and WAWF were sufficiently reliable to address our audit objectives.

Use of Technical Assistance

During the audit, we requested and received technical assistance from the DoD OIG Quantitative Methods Division (QMD). We coordinated with QMD to determine the type of sampling methodology for the audit. QMD personnel recommended we use a nonstatistical sample for our audit. We selected a sample of 28 task orders that contained

modifications that increased the cost of the task orders. Further, we selected a second nonstatistical sample for review. This nonstatistical sample consisted of 20 task order modifications with a cost greater than \$700,000.

Prior Coverage

During the last 5 years, the DoD OIG and the Department of the Army issued eight reports related to contract administration. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/>. Unrestricted Army reports can be accessed over the Internet at <http://www.aaa.army.mil/>.

DoD IG

DoD IG Report No. D-2011-078, “Contracts Supporting Base Operations in Kuwait Need Stronger Management and Administration,” June 30, 2011

DoD IG Report No. D-2010-059, “Contingency Contracting: A Framework for Reform,” May 14, 2010

DoD IG Report No. D-2010-054, “Advisory and Assistance Services Contracts in Support of the Air Force Combat Search and Rescue Helicopter,” May 4, 2010

DoD IG Report No. D-2009-102, “Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command,” September 18, 2009

DoD IG Report No. D-2009-083, “Logistics Support Contracting for the United States Special Operations Command,” May 28, 2009

Army

Army Audit Agency Report No. A-2011-0213-FFP, “Contract Incentives-U.S. Army Pacific,” September 29, 2011

Army Audit Agency Report No. A-2011-0203-IEU, “Visibility and Oversight of Service Contracts in Europe-U.S. Army Installation Management Command, Europe Region,” September 14, 2011

Army Audit Agency Report No. A-2009-0132-ALL, “Contracting Operations-U.S. Army Contracting Command Southwest Asia-Kuwait,” September 29, 2009

Appendix B. Potential Inherently Governmental Language

The table below contains task orders with inherently governmental language that may require contractors to perform inherently governmental duties.

Contract	Task Order	Inherently Governmental language	Reference to FAR
H92222-10-D-0017	5	The contractor's Financial/Budget Analyst shall review, analyze, and develop pertinent financial/budget guidance/procedures and assist Joint Military Information Support Command (JMISC) leadership and the Government Resource Manager in all phases of the Planning, Programming, Budgeting, and Execution System (PPBES).	7.503(c)(6)
H92222-10-D-0018	3	Conduct weekly briefings, information papers, scheduled and unscheduled intelligence or operations reports, recurring reports, messages, briefings, issue papers, terrorism threat level assessments, group or individual profiles, threat warning, link analysis, special assessments, forecasts, responses to inquiries, congressional testimonies, briefing books, trip books, and Commander USSOCOM discussion papers.	7.503(c)(20)
	4	They will be responsible for research and preparation of a variety of written products such as scheduled and unscheduled intelligence or operations reports, recurring reports, messages, briefings, information/issue papers, terrorism threat level assessments, group profiles, threat warning, link analysis, special assessments, forecasts, responses to inquiries, congressional testimonies, briefing books, trip books, and Commander USSOCOM discussion papers.	7.503(c)(20)

Contract	Task Order	Inherently Governmental language	Reference to FAR
H92222-10-D-0018	7	Contract Specialists will negotiate, administer, extend, and prepare termination documents and renegotiate contracts; formulate and coordinate procurement proposals; direct and coordinate activities of workers engaged in evaluating proposals; evaluate or monitor contract performance to determine necessity for amendments or extensions of contracts and compliance to contractual obligations; approve or reject requests for deviations from contract specifications and delivery schedules; arbitrate claims or complaints occurring in performance of contracts; analyze price proposals, financial reports, and other data to determine reasonableness of prices; and may serve as liaison officer to ensure fulfillment of obligations by contractors	7.503(c)(12)
	10	The contractor will support Congressional Requests for Information (RFIs) regarding components of wounded warrior care.	7.503(c)(20)
	11	The contractor will prepare draft answers to Congressional or higher headquarters Requests for Information (RFIs).	7.503(c)(20)
	26	[Marine Special Operations Command]G-9 requires contractor support to augment the Recruiting, Screening, Assessment, and Selection (RSAS) efforts until the MARSOC Total Force is realized. Within this requirement, there is both a full time and an episodic work force required in an effort to Recruit, Screen, Assess, and Select Qualified Marine Applicants (QMAs) for assignment to [Marine Special Operations School] and the individual Training Course (ITC) and follow on duty within MARSOC.	7.503(c)(9)
H92222-10-D-0019	6	The Contractor shall function as [Operational Test and Evaluation] Officer, providing leadership to the test team for assigned test programs.	7.503(c)(7)
	7	In support of this performance requirement, the Contractor shall provide acquisition source selection and vendor contract and outcome management support that encompasses full spectrum of strategy development, contract planning, and documentation development execution and monitoring, including contract post award monitoring.	7.503(c)(12)

Appendix C. Identified Task Order Issues

The table below contains task orders with unclear PWS requirements, outcomes that could not always be measured, modifications that added services to the contract, elements of a personal service contracts, and inherently governmental language.

Contract	Task Order	Unclear Requirements	Contain Outcomes That Are Not Measurable	Modifications Added Services ¹	Personal Service ²	Inherently Governmental
H92222-10-D-0016	01	√	√			
	02	√	√		√	
	03	√	√		√	
	04	√				
H92222-10-D-0017	05	√	√		√	√
	07	√	√	√√√	√	
	09	√	√	√√	√	
	11	√	√		√	
H92222-10-D-0018	02	√	√	√	√	
	03	√	√	√√√√	√	√
	04	√	√	√√√	√	√
	07	√	√	√√	√	√
	10	√	√	√	√	√
	11	√	√		√	√
	12	√		√√	√	
	13	√	√	√√√	√	
	14		√		√	
	19	√	√	√	√	
	22	√	√	√√	√	
	25	√	√	√	√	
	26	√	√		√	√
	28	√	√		√	
	34	√		√√√√	√	
H92222-10-D-0019	06	√	√			√
	07	√	√	√	√	√
	08	√	√	√	√	
	09	√	√	√√√√√√ √√√√√√		
	11		√		√	
Total		26	25³	43	24	9

¹ Each check mark represents a modification to the task order that added services not identified in the original task order PWS.

² Each task order identified contained at least four of six elements of a personal service contract.

³ As stated in Finding A, there are 24 task orders that contain outcomes that are not measurable while there is one task order without any identified outcomes.

Appendix D. Management Comments on the Draft Report and Our Response

The Director, Special Operations Research, Development, and Acquisition Center, provided management comments on the transmittal memorandum, Results in Brief, Introduction, Review of Internal Controls, Finding A, Finding B, and Finding C. For the full text of management comments see page 41.

Management Comments on the Introduction and Review of Internal Controls

The Director disagreed with statements made on page 2 (Introduction section) of the draft report. Specifically, the Director stated the section entitled Service and IDIQ Contracts, as currently written, appears to indicate that all service requirements must be firm-fixed price performance based. This view is inconsistent with the regulation and practice within the Federal Government. Additionally, the Director disagreed with statements in the Review of Internal Controls section. The Director recommended changing the second sentence to the following: “Consistent with USSOCOM’s FY13 [Annual Statement of Assurance], we identified an internal control weakness.” In addition, the Director recommended deleting the third sentence in its entirety.

Our Response

As stated in the report on page 1, “[t]he GBPS IDIQ contract allows for five task order types: firm-fixed price, firm-fixed price level of effort, fixed price incentive fee, cost plus fixed fee, and cost plus incentive fee.” Further, we refer to FAR part 37, which includes FAR 37.102. FAR 37.102 states when acquiring services, including those acquired under supply contracts or orders, agencies must use the following order of precedence:

- a firm-fixed price performance-based contract or task order,
- a performance-based contract or task order that is not firm-fixed price, and
- a contract or task order that is not performance based.

Management Comments on Finding A and Our Responses

The Director stated USSOCOM did not award any task orders with unclear requirements. Instead, the task orders’ PWS or SOW was clear for the type of task order issued and, as authorized by FAR 37.102(a)(2)(iii), a few of the task orders were not performance-based. Further, for the performance based task orders, a PWS was used. For this type of task order, the contractor is obligated to perform outcomes. In addition, a Standard Delivery Summary is incorporated into each of the GBPS task orders to establish a set of key requirements/deliverables with objectives, metrics, and method of evaluating contractor performance.

As a general comment, the Director agreed that for performance-based acquisitions, USSOCOM correctly used FAR subparts 2.1 and 16.5 and the “Guidebook for Performance-Based Service Acquisition (PBSA) in the Department of Defense.” In

addition, the Director stated, “nonperformance based task orders statement of work describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period.” Therefore, the few nonperformance based task orders reviewed should have been evaluated against these regulatory references.

Management Comments on Unclear Requirement Examples in the Draft Report

The Director, Special Operations Research, Development, and Acquisition Center, disagreed that contract H92222-10-D-0018 task order 11 and contract H92222-10-D-0019, task order 07 contained unclear requirements. The Director stated that contract H92222-10-D-0018, task order 11, “PWS Paragraph 4.0 provides the details of the deliverables. For example, 4.1.1 ‘...2-4 major presentations per month.’ 4.1.2 ‘...update portfolio information monthly...’ 4.1.3 ‘...review...on an annual basis.’ ” In addition, the Director agreed (with caveats) that,

[t]his support is dependent upon many variables outside the control of the government (at the time of task order award) and the GBPS contractor; therefore, it is virtually impossible to identify specifically when this support will be required. For example, transition of a program from the Technology Development Phase to the Engineering & Mfg Development Phase will impact when this specific support is required. If the contractor providing the supplies is behind on production or fails a test, the schedule is impacted and directly affects when the GBPS support will be required. The government knows this support will be required during the life of the task order, but cannot predict nor be tied to specific schedule or dates.

Further, for contract H92222-10-D-0019, task order 7, the Director stated,

[c]ost factors and CERs are available in a “pre-boxed” format, they can be created from historical data, they can be duplicated from other programs, and/or they can be developed from scratch. Selecting which of the above approaches to use (one or a combo) is dependent upon the program or item for which the cost estimate is being prepared. Therefore, “and/or” is correct in describing the required support.

Our Response

For contract H92222-10-D-0018, task order 11, the Director discussed details of task order deliverables; however, the audit report addresses issues with unclear requirements. The reports listed in the deliverable section are not directly associated with Systems Engineering and Configuration Management Support reports indicated in the requirements. Specifically, the requirement for reports is too general and broad as to the content of the reports or debriefs. The specific content of the reports or debriefs are not detailed, and there are no specific due dates for the reports or debriefs. In the report, we discussed the ambiguity created by using “and/or” in contract H92222-10-D-0019, task order 7. Based on the task order requirements, the contractor may only choose to identify “pre-boxed” cost factors; however, it may be in the best interest of the Government for the contractor to develop cost factors from “scratch.” Also, it is unknown which of the two requirements the contractor should fulfill. However, based on the wording in the task order requirements, the contractor is not required to perform further work.

Management Comments on Outcomes Not Always Measurable Examples in the Draft Report

The Director, Special Operations Research, Development, and Acquisition Center, disagreed with the statement that contract H92222-10-D-0017, task orders 5 and 11 and contract H92222-10-D-0018, task orders 4 and 13 contained outcomes that were not always measurable.

For contract H92222-10-D-0017, task order 5, the Director stated,

[t]his is not a PB task order. This task order is strictly manpower augmentation. The measurable outcomes are whether or not the contractor provides the appropriately skilled and qualified [subject matter experts] SMEs as detailed in paragraph 2 of Section C. The required standards to measure against are detailed in paragraph 3, Service Delivery Summary.

In addition, for task order 11, the Director stated,

[d]eliverables, paragraph 2.5, are described using the following terms: weekly, daily, bi-annually, Friday prebriefs, and 6-8 books annually. Some deliverables are due “as required.” This is because the mission of the IATF is dependent upon real-world events and deliverables are linked to dynamic findings from the SOCOM GSC process, CONPLANS, OPLANS, policy directives, etc. The government knows these deliverables will be required

For contract H92222-10-D-0018, task order 4, the Director stated,

[t]ypes of deliverables are detailed in paragraph 4.0 for six lines of investigation (4.1.18). Some deliverables do not have specific due dates or schedules because the mission of the IATF is dependent upon real-world events and deliverables are linked to dynamic findings from the SOCOM GSC process, CONPLANS, OPLANS, policy directives, etc. The government knows these deliverables will be required during the life of the task order, but cannot predict nor be tied to specific schedules or dates. The Basic Contract Service Delivery Summary and Task Order Level Service Delivery Summary identify the performance thresholds that apply to all task order deliverables.

In addition, for task order 13, the Director stated,

[t]his task order is strictly manpower augmentation. The measurable outcomes are whether or not the contractor provides the appropriately skilled and qualified SMEs as detailed in paragraph 2 of Section C. The require standards to measure against are detailed in paragraph 3, Service Delivery Summary.

Our Response

We believe contract H92222-10-D-0017, task order 5 is performance-based. Specifically, FAR 37.601 states performance-based contracts for services shall include a PWS, measurable performance standards, and the method of assessing contractor performance against the performance standards. The GBPS IDIQ contract also states that a contractor will provide a PWS in response to the Government’s Statement of Objectives. Based on FAR 37.601 and the GBPS IDIQ contract, the task order was a performance-based task order. Specifically, the task order contained a PWS and a Service Delivery Summary that listed performance standards and a method of evaluation.

However, the Service Delivery Summary, Metric-Performance Threshold located in the table is not a measurable standard for outcomes simply stated as “electronic resumes.”

Further, for task order 11, the section cited in the Director’s comments addresses “additional, firm deliverables.” However, we did not raise concerns about those deliverables. The wording discussed in the report states, “outcomes vary dependent on mission requirement changes and may include items, such as terrorism threat level assessments, group or individual profiles, threat warnings, link analysis, special assessments, and forecasts.” The use of “may” does not contractually require the contractor to provide the listed outcomes, and does not identify how many (quantity) and when (delivery date) those outcomes are required.

For contract H92222-10-D-0018, task order 4, we disagree that deliverables (such as briefings or papers, discussion papers, issue specific studies, official messages, and operational and administrative calendars) can be measured based on the basic contract Service Delivery Summary or Task Order Level Service Delivery Summary. The deliverables listed in the PWS do not have associated timeframes. Without a measurable timeframe, the contractor cannot be held to “no more than 2 working days late” because there is no required date to provide the deliverable.

In addition for task order 13, we disagree that the task order is not performance based. Specifically, FAR 37.601 states performance-based contracts for services shall include a PWS, measurable performance standards, and the method of assessing contractor performance against the performance standards. Further, the GBPS IDIQ contract states a contractor will provide a PWS in response to the Government’s Statement of Objectives. Based on FAR 37.601 and the GBPS IDIQ contract, the task order was a performance-based task order.

Additionally, we disagree that measurable outcomes are whether or not the contractor provides the appropriately skilled and qualified subject matter experts as detailed in paragraph 2 of Section C for the following reasons.

- Section 2.0 “Personnel Requirements and Minimum Skills” details the specific functional requirements.
- There is no section in the PWS that outlines the deliverables required by the Government; therefore, based on the Director’s comments, the contractor is not required to provide any outcomes beyond ensuring qualified personnel are onsite.
- Outcomes requested by the Government would have to be directed on a continuous basis by Government personnel because the contractor does not have formally established outcomes.
- Based on the Director’s comments, providing outcomes would be at the contractor’s discretion because they met the outcome of providing qualified, onsite personnel.

Management Comments on Inherently Governmental Duties

The Director, Special Operations Research, Development, and Acquisition Center, stated while the statement cannot be verified, the intent of the response was as follows:

[p]rior to awarding any GBPS task order, a contracting officer reviewed the PWS or SOW to ensure there were no inherently governmental duties included. A written determination was not prepared at the task order level since a written determination was accomplished at the contract level and it was believed the documentation requirements had been satisfied.” Henceforth, the subject determination will be prepared for each task order and placed in the contract file.

Further, the Director stated, “[i]n no case was a task order awarded without a contracting officer’s review.”

Our Response

The report states, “nine task orders may have included inherently governmental duties.” The audit focused on FAR guidance for articulating requirements of a performance-based task order. Therefore, the report stated “may have included” and was not an indication that inherently governmental duties were being performed. In addition, the Director stated that the language in question was removed from five of the nine task orders and one expired task order. Therefore, the Command met the intent of the report when it initiated actions to prepare a determination and include the determination in the contract file for the remaining three task orders.

Management Comments on Task Orders Contained Elements of a Personal Service Contract

The Director, Special Operations Research, Development, and Acquisition Center, disagreed with the statement that contract H92222-10-D-0018, task order 7 contained elements of a personal service contract. Specifically, the Director stated that comments made within the DoD OIG draft report do not prove task orders were issued for personal services. He noted the omission of a discussion of the Task Lead for most task orders and, at a minimum, each GBPS prime contract.

Our Response

The intent of the finding was not to imply that task orders were for personal services, but, as currently written, there were elements of a personal service contained in the language of the task orders. Therefore, based on the statement “because the basic GBPS contract was deemed nonpersonal in nature subsequent task orders were not required to be reviewed for personal services,” our report finding highlighted the concerns for reviewing all task orders for personal services. Further, regardless of assigned task leads, if task orders do not have formally established outcomes, the Government would have to direct the contractor on a continuous basis for task orders that do not have formally established outcomes.

Management Comments on Finding B and Our Responses

The Director, Special Operations Research, Development, and Acquisition Center, partially agreed with Finding B and provided additional comments.

Management Comments on Price Reasonableness Guidance

The Director, Special Operations Research, Development, and Acquisition Center, agreed with this paragraph.

Management Comments on Contracting Officers Did Not Determine Fair and Reasonable Prices for Modifications

The Director, Special Operations Research, Development, and Acquisition Center, disagreed with the statement that contracting officers did not determine fair and reasonable prices for modifications.

Management Comments on Time Constraints Should Not Prevent Documenting Price Reasonableness Determinations

The Director, Special Operations Research, Development, and Acquisition Center, stated the contracting officer did not state that the lack of time prevented the price reasonableness determination. However, the Director agreed with the statement that an independent Government cost estimate was used as a basis for the price reasonableness determination. USSOCOM already has metrics regarding the contract file documentation, which encompasses the price reasonableness determination.

Our Response

When we requested documentation, USSOCOM officials did not provide evidence for price reasonableness determinations. The Director stated that contracting officers used the competitive proposals received at each task order competition to conduct an analysis and determine the price proposed to be fair and reasonable. According to FAR 15.403-4(a)(1)(iii), certified cost or pricing data must be obtained for contract modifications over the \$700,000, regardless of whether cost or pricing data were initially required. While contracting officers may review competitive proposals received at each task order competition, cost and pricing data received for the initial task order competition are not sufficient to determine reasonable price analysis for modifications.

Management Comments on Prior Problems Determining Fair and Reasonable Prices Were Not Corrected

The Director, Special Operations Research, Development, and Acquisition Center, disagreed and stated that USSOCOM did take appropriate action. In addition, the Director stated, “training was provided, new regulations were issued, and metrics were developed, i.e., HOO contract file.” Further, the Director noted the following statement is erroneous: “USSOCOM officials stated that no metrics have been established...”

In accordance with the USSOCOM FY 2013 Annual Statement of Assurance, USSOCOM will continue to improve the contract file documentation.

Our Response

We requested evidence that USSOCOM initiated actions based on our previous report. We acknowledged that USSOCOM did take action, such as providing training and updating guidance, but USSOCOM officials stated no metrics were established. Further, USSOCOM did not provide evidence that the metrics were developed, and the Director stated metrics were not necessary.

Management Comments on the Conclusion

The Director, Special Operations Research, Development, and Acquisition Center, requested changing the Conclusion to reflect a documentation concern, not a price reasonableness determination issue. Moreover, the Director stated USSOCOM initiated actions (and will continue) to improve the quality of contract file documentation.

Our Response

We acknowledge and commend USSOCOM for the actions taken. However, there is no evidence that price reasonable determinations were performed. The data usage received at each task order competition was not sufficient to make a determination. FAR 15.403-4(a)(1)(iii) states that certified cost or pricing data must be obtained for contract modifications over the \$700,000, regardless of whether cost or pricing data were initially required. While contracting officers may review competitive proposals received at each task order competition, cost and pricing data received for the initial task order competition are not sufficient to determine reasonable price analysis for modifications.

Management Comments on Finding C and Our Response

The Director, Special Operations Research, Development, and Acquisition Center, partially agreed with Finding C and stated,

[t]hat action to address the finding is currently ongoing. He also stated that contracting officers were conducting and are continuing to conduct an aggressive program to train CORs on the proper use of WAWF to process invoices and ensure payment is made only for service rendered. The Director further stated that contracting officers only processed [Firm-Fixed Price] invoices based on the contracted monthly amounts and the amount is not a “scheduled interval” payment. Moreover, the Director stated because of the sound relationship with Government POCs and regular interaction with the GBPS prime contractors, contracting officers confidently process invoices with no concern or issues with services being received and contractor performance.

Our Response

We commend the contracting officers’ efforts in training the CORs on the use of WAWF to facilitate processing invoices and ensure payment is made only for services rendered. We also agree with the Director’s comments that contracting officers only processed [Firm-Fixed Price] invoices based on the contracted monthly amounts; however, this does not negate Federal or DoD requirements to verify contractor performance before invoice

payment. As stated above, FAR Subpart 32.905, "Payment Documentation and Process," requires invoice payments be made based on receipt of proper invoice and satisfactory contract performance. In addition, the DoD COR Handbook, March 22, 2012, states that CORs should monitor contractor performance through review of monthly reports, onsite visits, surveillance reviews, and contractor billing statements thoroughly and on time to mitigate the risk of the Government paying for contracted services that have not been received. While a sound relationship and almost daily interaction with Government point of contacts and the GBPS prime contractors can be vital to the contract administration process, the relationships cannot substitute for compliance with required Federal and DoD guidance. Until the CORs are fully trained to certify invoices in WAWF, contracting officers should implement procedures to verify contractor performance and invoices are based on satisfactory contract performance before certifying payments in WAWF.

U.S. Special Operations Command, Special Operations Research, Development, and Acquisition Center Comments



UNITED STATES SPECIAL OPERATIONS COMMAND

7701 TAMPA POINT BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

SORDAC

7 JAN 2013

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, 4800
MARK CENTER DRIVE, ALEXANDRIA, VIRGINIA 22350-1500

SUBJECT: Response to Draft Report of Department of Defense Inspector General Audit
of the U.S. Special Operations Command Global Battlestaff and Program Support
Contract Oversight, Project No. D2012-D000JB-0043.000

1. On 28 November 2012, the Department of Defense (DoD) Office of the Inspector General (IG) issued a Draft Report on Improvements Needed in U.S. Special Operations Command (USSOCOM) Global Battlestaff and Program Support Contract Oversight, Project No. D2012-D000JB-0043.000.
2. USSOCOM appreciates the time and effort the DoD IG Team invested in conducting this review of the activities at the USSOCOM Headquarters. USSOCOM's response to the subject report is contained in the enclosure. Prior to release of the final report, we formally request a follow-up meeting to discuss our response and resolve non-concurrences, where possible.
3. My point of contact for this response is Colonel Kurt Bergo, Director of Procurement,
[REDACTED]

*Sir,
- looking forward to
resolving any discrepancies
at earliest convenience.
JW/JS*

James W. Cluck
Director, Special Operations Research,
Development, and Acquisition
Center

Encl
DoD Draft Audit Report Response

**UNITED STATES SPECIAL OPERATIONS COMMAND
RESPONSE TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DRAFT AUDIT REPORT NO. D2012-D000JB-0043.000
ENTITLED "IMPROVEMENTS NEEDED IN U.S. SPECIAL OPERATIONS COMMAND
GLOBAL BATTLESTAFF AND PROGRAM SUPPORT CONTRACT OVERSIGHT"**

SUMMARY SECTION

The overall objective of the Department of Defense Inspector General (DoD IG) audit was to determine whether U.S. Special Operations Command (USSOCOM) properly administered task orders awarded under the Global Battlestaff and Program Support (GBPS) contract. The response contained herein to the Draft Report is broken into several sections, which are identified below. Within each section referenced below, USSOCOM has provided a response to specifically address certain comments made in the Draft Report.

- A) Draft Cover Letter.
- B) Results in Brief Section.
- C) Introduction.
- D) Draft Report Findings.
- E) USSOCOM Response to the Draft Findings.
- F) USSOCOM Response to the DOD IG Draft Report Recommendations.
- G) Appendix A
- H) Appendix B
- I) Appendix C

USSOCOM RESPONSE TO THE DRAFT COVER LETTER
(Reference Draft Report, no page number)

Based on the discussion contained later herein, USSOCOM recommends the first paragraph of the cover letter be replaced with the following:

"USSOCOM needs to improve two areas in the oversight of the Global Battlestaff and Program Support contracts. First, USSOCOM must continue to ensure contracting officers are including the price fair and reasonable determination in the contract file. Even though contracting officers used the independent Government cost estimate to establish a fair and reasonable price for 20 GBPS contract modifications valued at \$38.8M, the actual price reasonable determination documentation was not documented in the contract file. (It is noted that USSOCOM documented this situation in its fiscal year 2013 (FY13) annual statement of assurance (ASA) and has improved since Report No. D-2009-102, "Price Reasonableness Determinations for Contracts Awarded by USSOCOM," was issued.) Second, even though USSOCOM has a process to ensure that services are performed in accordance with the contract, USSOCOM needs to train appropriate personnel on contract payment certification and implement processes to ensure the responsibility for contract payment certification are properly delegated."

USSOCOM RESPONSE TO THE RESULTS IN BRIEF SECTION
(Reference Draft Report, Pages i and ii)

1) For the reasons addressed in the next section, USSOCOM non-concurs with the comments made on page i of the Draft Report:

- i. awarded 26 task orders with unclear requirements in the performance work statements (PWSs),
- ii. awarded 1 task order without any identified outcomes and 24 task orders that did not always have measurable outcomes,
- iii. may have included inherently governmental duties in 9 task orders, and
- iv. awarded 24 task orders that contained elements of a personal service contract.

2) USSOCOM recommends that the first paragraph under the subheading "What We Found (reference Draft Report, page i)" be removed. USSOCOM also recommends the references to "controls to ensure task orders..." be deleted from under the subheading "What We Recommend (reference the Draft Report, page i)."

3) Furthermore, USSOCOM non-concurs that this is a repeat finding associated with unclear requirements, lack of measurable outcomes, inclusion of inherently governmental duties, or elements of a personal service contract. Moreover, even for

the comments associated with the price reasonable determination, USSOCOM does not agree that this is a repeat finding.

USSOCOM RESPONSE TO THE INTRODUCTION SECTION
(Reference Draft Report, Pages 1-3)

1) Under the subheading entitled, "Service and IDIQ Contracts (reference Draft Report, page 2)," FAR 37.102(a)(2)(iii) and DFARS 237.170-2, and FAR 16.306(d)(2) need to be included. As currently written, this section appears to indicate that all service requirements must be firm fixed price performance based. This view is inconsistent with regulation and practice within the federal government.

2) Under the subheading entitled, "Review Internal Controls (reference Draft Report, pages 2-3)," USSOCOM recommends that the second sentence be changed to the following:

"Consistent with USSOCOM's FY13 ASA, we identified an internal control weakness..."

Also, USSOCOM recommends deleting the third sentence in its entirety.

USSOCOM RESPONSE TO THE DRAFT REPORT FINDINGS SECTION
(Reference Draft Report, Pages 4-19)

DoD IG Finding A. Improvements Needed in the USSOCOM Task Order Administration (Reference Draft Report, Page 4)

Finding A: USSOCOM contracting officers did not properly administer GBPS task orders in accordance with Federal guidance. Specifically, for 28 task orders reviewed contracting officers:

- v. awarded 26 task orders with unclear requirements in the performance work statements (PWSs),
- vi. awarded 1 task order without any identified outcomes and 24 task orders that did not always have measurable outcomes,
- vii. may have included inherently governmental duties in 9 task orders, and
- viii. awarded 24 task orders that contained elements of a personal service contract.

This occurred because contracting officers did not validate that task order terms complied with FAR requirements. The lack of appropriate contract award and administration put USSOCOM at risk of not getting the best value for GBPS services and improperly executing future task order options, valued at \$206 million.

USSOCOM Response to Finding A. USSOCOM non-concurs with this finding. The following provides support for this non-concurrence:

Contracting Officers Awarded Task Orders with Unclear Requirements (Reference Draft Report, subheading, pages 4-5)

1. USSOCOM did not award any task orders with unclear requirements. Instead, the task orders' PWS or SOW was clear for the type of task order issued. That is, in accordance with FAR 37.6, GBPS contract task orders, to the maximum extent practicable, were performance based. However, as authorized by FAR 37.102(a)(2)(iii), a few of the task orders were not performance based.

2. For the performance based task orders, a PWS (see FAR 37.602(a)) was used. For this type of task order, the contractor is obligated to perform outcomes. In addition, a Standard Delivery Summary (SDS) is incorporated into each of the GBPS task orders to establish a set of key requirements/deliverables with objectives, metrics, and method of evaluating contractor performance. Quarterly, both the contractor and the Contracting Officer's Representative (COR) assess contractor progress with achieving the outcomes using this SDS as the basis.

3. The few task orders that were not performance based included an SDS. In addition and related to these few orders, the following statement is made in the Draft Report:

“...a contracting officer stated USSOCOM personnel preferred task order PWSs with vague requirements...”

While the verbatim statement cannot be confirmed, the intent of the statement was as follows:

“Consistent with FAR 37.6 and DFARS 237.170-2, a performance based task order was used to the “maximum extent practicable. However, for a few of the GBPS requirements, it was necessary to obtain services using a non-performance task order. In these few cases, the statement of work was drafted consistent with FAR 16.306(d)(2), which describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period.”

4. As a general comment, USSOCOM agrees with the references to FAR 16.5, FAR 2.1, and the “Guidebook for Performance-Based Service Acquisition (PBSA) in the Department of Defense” in the paragraph at the bottom of page 4. However, FAR 37.102(a)(2)(iii) and FAR 16.306(d)(2) authorize a non-performance based task order. The few non-performance based task orders reviewed should have been evaluated

against these regulatory references. See also pages 41-43, *Cost Reimbursement Contracts*, Third Edition, for a discussion of level of effort tasks.

5. On page 5 of the Draft Report, comments are made regarding two specific GBPS task orders. An analysis of these comments is below.

	Contract	TO	Audit Comment	Response
Non-concur	10D0018	0011	Requirement to submit reports is unclear. Page 5	PWS Paragraph 4.0 provides the details of the deliverables. For example, 4.1.1 "...2-4 major presentations per month." 4.1.2 "...update portfolio information monthly..." 4.1.3 "...review... on an annual basis."
Concur w/caveat	10D0018	0011	Test & Eval support is open-ended. Page 5	This support is dependent upon many variables outside the control of the government (at the time of task order award) and the GBPS contractor; therefore, it is virtually impossible to identify specifically when this support will be required. For example, transition of a program from the Technology Development Phase to the Engineering & Mfg Development Phase will impact when this specific support is required. If the contractor providing the supplies is behind on production or fails a test, the schedule is impacted and directly affects when the GBPS support will be required. The government knows this support will be required during the life of the task order, but cannot predict nor be tied to specific schedule or dates.
Non-concur	10D0019	0007	And/or ambiguity Page 5	Cost factors and CERs are available in a 'pre-boxed' format, they can be created from historical data, they can be duplicated from other programs, and/or they can be developed from scratch. Selecting which of the above approaches to use (one or a combo) is dependent upon the program or item for which the cost estimate is being prepared. Therefore, "and/or" is correct in describing the required support.

6. Based on the above, USSOCOM has adequate controls to ensure task orders are awarded with a PWS or SOW consistent with applicable regulations. Moreover, the suggestion to terminate task orders not complying with the FAR on page 5 is unfounded.

Outcomes Not Always Measurable (Reference Draft Report, subheading, page 6)

1. A few of the GBPS task orders were processed as non-performance based requirements. In these few cases, the statement of work was drafted consistent with

FAR 16.306(d)(2), which describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period.
In some cases, USSOCOM was able to have the contractor price the level of effort requirements on a firm fixed price basis.

2. On page 6 of the draft Report, specific comments are made regarding four GBPS task orders. An analysis of these comments is below.

3. Based on the above, the suggestion to terminate task orders is unfounded.

	Contract	TO	Audit Comment	Response
Non-concur	10D0017	0005	Some outcomes not measurable Page 6	This is not a PB task order. This task order is strictly manpower augmentation. The measurable outcomes are whether or not the contractor provides the appropriately skilled and qualified SMEs as detailed in paragraph 2 of Section C. The required standards to measure against are detailed in paragraph 3, Service Delivery Summary.
Non-concur	10D0017	0011	Does not identify how many and when outcomes are required Page 6	Deliverables, paragraph 2.5, are described using the following terms: weekly, daily, bi-annually, Friday pre-briefs, and 6-8 books annually. Some deliverables are due "as required." This is because the mission of the IATF is dependent upon real-world events and deliverables are linked to dynamic findings from the SOCOM GSC process, CONPLANs, OPLANs, policy directives, etc. The government knows these deliverables will be required during the life of the task order, but cannot predict nor be tied to specific schedules or dates.
Non-concur	10D0018	0004	Some outcomes not measurable Page 6	Types of deliverables are detailed in paragraph 4.0 for six lines of investigation (4.1.18). Some deliverables do not have specific due dates or schedules because the mission of the IATF is dependent upon real-world events and deliverables are linked to dynamic findings from the SOCOM GSC process, CONPLANs, OPLANs, policy directives, etc. The government knows these deliverables will be required during the life of the task order, but cannot predict nor be tied to specific schedules or dates. The Basic Contract SDS and Task Order Level SDS identify the performance thresholds that apply to all task order deliverables.
Non-concur	10D0018	0013	Did not list any outcomes Page 6	This task order is strictly manpower augmentation. The measurable outcomes are whether or not the contractor provides the appropriately skilled and qualified SMEs as detailed in paragraph 2 of Section C. The required standards to measure against are detailed in paragraph 3, Service Delivery Summary.

Task Orders May Have Included Inherently Governmental Duties (Reference Draft Report, subheading, pages 6-7 and 9-10)

1. On page 9 of the draft Report, the following statement is made:

"A contracting officer stated because the basic GBPS contract was deemed non-personal in nature and the contract was reviewed for inherently governmental functions, subsequent task orders were not required to be reviewed for...inherently governmental functions...

While the verbatim statement cannot be verified, the intent of the response was as follows:

"Prior to awarding any GBPS task order, a contracting officer reviewed the PWS or SOW to ensure there were no inherently governmental duties included. A written determination was not prepared at the task order level since a written determination was accomplished at the contract level and it was believed the documentation requirements had been satisfied." Henceforth, the subject determination will be prepared for each task order and placed in the contract file."

In no case was a task order awarded without a contracting officer's review. Additionally, as of 1 February 2012, a written determination is accomplished for each task order to document the contracting officer's review

2. GBPS Contract clause H.6 "Government Contractor Relationships" was incorporated into the contracts to prohibit the government and the contractor from engaging in inherently governmental activities. Even though the PWS of four task orders inadvertently included a few words bordering on inherently governmental duties, there is no evidence of a systemic issue or reflecting a repeat finding. This was an error, and the language was removed. Moreover, consistent with contract clause H.6, contractor personnel did not actually perform these duties.

3. On page 7 and Appendix B of the Draft Report, comments were made regarding specific GBPS task orders. Listed below are responses to these comments.

	Contract	TO	Audit Comment	Response
Non-concur	10D0017	0005	May have included inherently governmental duties Ref: FAR 7.503(c)(6) Page 24	Specifically states "...assist...JMISC leadership and the Government Resource Manager..." The contractor is not determining program priorities for budget requests.
Concur w/caveats	10D0018	0003	May have included inherently governmental duties Page 7 & 24	Language in question was removed from the task order while the audit team was onsite. Reference modification 20 dated 29 Feb 2012.
Non-concur	10D0018	0004	May have included inherently governmental duties Page 7 & 24	Language in question was removed from the task order prior to the audit team's arrival. Reference modification 06 dated 27 Oct 2010.
Concur w/caveats	10D0018	0007	May have included inherently governmental duties Page 7 & 25	Language in question was removed from the task order while the audit team was onsite. Reference modification 09 dated 24 Feb 2012.
Concur w/caveats	10D0018	0010	May have included inherently governmental duties Ref: FAR 7.503(c)(20) Page 25	Language in question was removed from the task order. Reference modification 06 dated 20 Jul 2012.
Concur	10D0018	0011	May have included inherently governmental duties Ref: FAR 7.503(c)(20) Page 25	Language in question will be removed via modification NLT 21 Dec 2012.
Non-concur	10D0018	0026	May have included inherently governmental duties Ref: FAR 7.503(c)(9) Page 25	The contractor is required to "augment the...RSAS efforts..." Augmenting the government staff is not allowing or requiring the contractor to select or non-select. These individuals are currently active duty service members and not seeking Federal Government employment. This is a screening/selection process to identify applicants to MSOS, ITC, and follow-on duty within MARSOC.
N/A	10D0019	0006	May have included inherently governmental duties Ref: FAR 7.503(c)(7) Page 25	No action was taken. The task order had expired on 22 May 2011 (prior to the audit team's visit).
Non-concur	10D0019	0007	May have included inherently governmental duties Ref: FAR 7.503(c)(12) Page 25	The contractor is required to "...provide...general program management support, expert advice, analysis and assistance in carrying out [PEO-FW] responsibilities..." which are not inherently governmental functions per FAR 7.503(c)(12)(i) through (viii).

Task Orders Contained Elements of a Personal Service Contract (Reference Draft Report, subheading, pages 7-8)

1. USSOCOM concurs that FAR 37.104(d) provides the descriptive elements that "should be used as a guide in assessing whether or not a proposed contract is personal in nature." However, inclusion of one or more of these elements is not prohibited. FAR 37.104(c) states the following:

"An employer-employee relationship under a service contract occurs when, as a result of

(i) the contract's terms or

(ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section)."

As currently written, the Draft Report does not prove anything regarding personal services.

2. On page 8 of the Draft Report, there is a reference to statements made by technical representatives. When this was introduced during the exit brief, it was extensively explained that contracting officers cannot monitor the daily administration of every GBPS task order. However, if facts were presented that government direction was occurring, actions would be taken to ensure it was stopped immediately. And, the government person(s) would receive the appropriate level of attention and disciplinary action based on the circumstances. The comments made within the Draft Report do not prove task orders were issued for personal services. Noticeably absent from this Draft Report is a discussion of the Task Lead for most task orders and, at a minimum, each GBPS prime contract. The Task Lead directs all work of the contractor's personnel. It

is acknowledged that discussions between government personnel and contractor personnel occur regarding a particular requirement/project/deliverable. However, there is no day-to-day government direction authorized in the contracts or task orders. FAR 37.104(c) states in part that

“...The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant...”

3. Listed below are responses to the comments made on page 8 of the Draft Report.

	Contract	TO	Audit Comment	Response
Concur w/caveats	10D0017	0005	Contain elements of a personal service Page 8	The task order does contain one or more of the elements to be used as a guide, but was not issued as a personal services contract. It is straight manpower augmentation. Additionally, the Contracting Officer(s) has no indication it is being administered as a personal services contract.
Non-concur	10D0018	0007	Contain elements of a personal service Page 8	In accordance with FAR 37.104(c)(1)(ii), “giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.
Concur w/caveats	10D0018	0013	Contain elements of a personal service Page 8	The task order does contain one or more of the elements to be used as a guide, but was not issued as a personal services contract. It is straight manpower augmentation. Additionally, the Contracting Officer(s) has no indication it is being administered as a personal services contract.
Concur w/caveats	10D0018	0028	Contain elements of a personal service Page 8	The task order does contain one or more of the elements to be used as a guide, but was not issued as a personal services contract. Additionally, the Contracting Officer(s) has no indication it is being administered as a personal services contract.
Concur w/caveats	10D0018	0034	Contain elements of a personal service Page 8	The task order does contain one or more of the elements to be used as a guide, but was not issued as a personal services contract. Additionally, the Contracting Officer(s) has no indication it is being administered as a personal services contract.

Task Order Terms Not Well Defined and the Problem was previously Reported
(Reference Draft Report, subheading, page 9)

For the reasons previously included in this document, USSOCOM non-concurs that the GBPS task orders were not well defined. As such, USSOCOM also non-concurs that this is a repeat finding.

Task Orders Not Reviewed for Inherently Governmental Functions and Personal Service Contract Elements (Reference Draft Report, subheading, pages 9-10)

For the reasons previously included in this document, USSOCOM non-concurs that the GBPS task orders were not reviewed for inherently governmental functions and personal service contract elements.

DoD IG Finding B. Modifications Awarded without Prices Reasonableness Determinations (Reference Draft Report, Page 12)

Finding B: Contracting officers awarded 20 modifications, under 10 task orders, totaling approximately \$38.8 million, without a determination of fair and reasonable price. Furthermore, USSOCOM officials did not take action to address recommendations made in DoD IG Report No. D-2009-102, to improve controls over its contracting processes. The recommendations requested USSOCOM officials to implement FAR procedures for performing and documenting fair and reasonable price determinations. As a result, USSOCOM may not have received fair and reasonable prices for contracted services.

USSOCOM Response to Finding B. USSOCOM partially concurs. As stated on page 13 of the draft Report, contracting officers used the independent government cost estimate (IGCE) and other documents, to include the competitive proposals received at each task order competition, to conduct an analysis and determine the price proposed to be fair and reasonable. While the fair and reasonable price analyses may not have been properly documented, SOCOM is confident that all modifications were awarded with fair and reasonable prices. Moreover, as reflected in the USSOCOM FY13 ASA, USSOCOM has a plan to resolve contract documentation issues. Process changes were immediately implemented requiring Certificates of Current Cost or Pricing Data, as required at FAR 15.403, be provided for all GBPS actions exceeding the \$700,000 threshold.

Modifications Awarded Without Price Reasonableness Determinations (page 12 of the Draft Report).

The statement that the contracting officer indicated that "time constraints" caused the lack of documentation is misrepresented in the draft Report as 'not determining prices to be fair and reasonable'; as opposed to 'not documenting the determination' as was intended. Furthermore, USSOCOM disagrees with the following statement:

“...USSOCOM officials did not take action to address recommendations, made in DoD OIG Report No. D-2009-102, to improve controls over its contracting process...”

USSOCOM provided pricing training, updated the SOFARS for independent reviews, and included a metric in the Health of the Office, i.e., contract files.

For the reasons previously included in this document, USSOCOM non-concurs that USSOCOM may not have received fair and reasonable prices for contract services.

Price Reasonableness Guidance (Reference Draft Report, subheading, page 12).

USSOCOM concurs with this paragraph.

Contracting Officers Did not Determine Fair and Reasonable Prices for Modifications (Reference Draft Report, subheading, pages 12-13).

For the reasons previously included in this document, USSOCOM non-concurs that contracting officers did not determine fair and reasonable prices for modifications.

Time Constraints Should not Prevent Documenting Price Reasonableness Determinations (Reference Draft Report, subheading, page 13).

The contracting officer did not state that the lack of time prevented the price reasonableness determination. USSOCOM concurs with the statement that IGCE was used as a basis for the price reasonableness determination. USSOCOM already has metrics regarding the contract file documentation, which encompasses the price reasonableness determination.

Prior Problems Determining Fair and Reasonable Prices Were not Corrected (Reference Draft Report, subheading, page 14).

USSOCOM non-concurs with this section. USSOCOM did take appropriate action. Training was provided, new regulations promulgated, and metrics were developed, i.e., HOO contract file. The following statement is erroneous:

“...USSOCOM officials stated that no metrics have been established...”

Consistent with the USSOCOM FY13 ASA, we will continue to improve the contract file documentation.

USSOCOM May Not be Receiving Best Value (Reference Draft Report, subheading, page 15).

For the reasons previously included in this document, USSOCOM non-concurs that USSOCOM may not be receiving best value.

Conclusion (Reference Draft Report, subheading, page 15).

USSOCOM requests that the conclusion be changed to reflect a documentation concern, not a price reasonableness determination issue. Moreover, USSOCOM has taken actions and will continue to improve the quality of contract file documentation.

DoD IG Finding C. Improvements Needed in GBPS Contract Payment Certification Process (Reference Draft Report, Page 16)

USSOCOM Response to Finding C. USSOCOM partially concurs. Action to address this Finding is currently ongoing. Contracting Officers were conducting and are continuing to conduct an aggressive program to train CORs on the proper use of Wide Area Work Flow to process invoices and ensure compliance with their fiduciary responsibility to ensure payment is made only for services rendered and to which the contractor is entitled. USSOCOM does not concur that the contracting officers cannot ensure the government received services for which it paid. Contracting Officers only processed FFP invoices based on the contracted monthly amounts. The FFP monthly amount is not a "scheduled interval" payment. It is the fixed price for one month of services as detailed in the task order. The sound relationship with the government POCs and regular (almost daily) interaction with the GBPS prime contractors provided the foundation to confidently process invoices with no concern for issues with services being received and contractor performance.

USSOCOM RESPONSE TO THE DRAFT REPORT RECOMMENDATIONS

DoD IG Recommendation A.1. (Reference Draft Report, Page 10). Implement controls to ensure task orders contain clearly defined performance work statements and comply with Federal and DoD regulations for inherently governmental functions and personal services job elements.

USSOCOM Response to Recommendation A.1. USSOCOM believes adequate controls exist. The GBPS contract prohibits the government and the contractor from engaging in personal services, except when a task order expressly contains requirements establishing personal services in accordance with USSOCOM statutory authority authorizing personal services, reference DFARS 237.104(b)(iii)(A)(1)(iii). USSOCOM has conducted a review of GBPS task orders for language appearing as inherently governmental function support and/or personal services. Task orders containing such language have been modified to remove the language. Additionally, when contracting officers or the contractor become aware of actions taken by the government that have the appearance of or the contractor is actually conducting inherently governmental or personal services activities, the contracting officer takes immediate action to remedy the situation. As for clearly defined work statements, USSOCOM is conforming to FAR and DoD regulations for PWSs to contain outcomes. The FAR requires that PWSs describe the required results in clear, specific and objective terms with measurable outcomes. Each of the task orders contain the offeror's PWS in response to the government's Statement of Objectives and the contractor is contractually obligated to meet the requirements of the PWS. The task orders also contain a Service Delivery Summary which is employed to measure the contractor's performance in fulfilling the PWS. As each of the task orders contain an SDS, USSOCOM is in compliance with FAR and DFAR requirements regarding clearly defined requirements with measurable outcomes.

Timeline for Completion of Recommendation A.1. Actions associated with reviewing GBPS task orders and removing language indicating the contractor is to perform inherently government or personal services have been completed and task orders modified accordingly.

DoD IG Recommendation A.2. (Reference Draft Report, Page 10). Perform a review of existing task orders for unclear requirements and un-measurable outcomes and modify or terminate task orders not complying with Federal Acquisition Regulation subparts 2.1, 16.5, and 37.6 requirements.

USSOCOM Response to Recommendation A.2. The PWS contains requirements which the contractor proposed and is held contractually responsible for performing. Additionally, at FAR 37.602, agencies shall, to the maximum extent practicable, describe the work in terms of the required results; enable assessment of

work performance; and rely on measurable performance standards. USSOCOM GBPS task orders are compliant. Achieving successful contractor performance in an evolving, flexible Command challenged with changing priorities demands USSOCOM execute contracts with flexibility embedded to ensure the contractor can provide the required services to support the mission. The SDS serves as a method of ensuring the contractor's performance is measured and the contractor is held accountable for achieving the required results.

Timeline for Completion of Recommendation A.2. No action required.

DoD IG Recommendation A.3. (Reference Draft Report, Page 10). Perform a review of task orders to determine if contractors are performing inherently governmental duties and modify or terminate task orders not complying with Federal Acquisition Regulation subpart 7.5 requirements.

USSOCOM Response to Recommendation A.3. With one notable exception the sample population of task orders that the DOD IG reviewed contained language that was interpreted by the team as requiring the contractor to engage in inherently governmental functions. The exception was a requirement to draft responses to Congressional correspondence. The questionable language contained in the other task orders erroneously created this misinterpretation. GBPS contracting officers have undertaken a review of the GBPS task orders and removed or revised any language, questionable or actual, regarding the contractor to engage in inherently governmental functions.

Timeline for Completion of Recommendation A.3. Complete. Actions to meet this recommendation were accomplished both while the audit team was present and prior to the draft audit being released.

DoD IG Recommendation A.4. (Reference Draft Report, Page 11). Perform a review of task orders to determine if contractors are performing personal services and modify or terminate task orders not complying with Federal Acquisition Regulation subpart 37.1 requirements.

USSOCOM Response to Recommendation A.4. Except as expressly stated as a personal service entered into using statutory authority granted to USSOCOM, GBPS task orders are a means of acquiring by contract the services of contractors to either increase USSOCOM's capability or capacity. All non-personal service task orders contain a PWS or SOW whereby the contractor's employees are, either by the task order's terms or the manner of its administration, not subject to the supervision or control prevailing in relationships between the Government and its employees. Therefore, by definition, the task orders are non-personal in nature as defined at FAR Subpart 37.101. Additionally, GBPS contract clause H.6 language states "The parties

recognize and agree that no employer - employee relationships exist or will exist under the contract between the Government and Contractor and/or between the Government and the Contractor's employees." Should the Contracting Officer becomes aware of a task order being administered as a personal services contract by the actions of the government and/or the reactions of the contractor, corrective action is taken immediately. Corrective action ranges from a written warning to revocation of the COR's appointment to task order termination as necessitated by the severity of the action(s).

Timeline for Completion of Recommendation A.4. No action required.

DOD IG Recommendation A.5. (Reference Draft Report, Page 11). Initiate a review of contracting officers' adherence to Federal Acquisition Regulation requirements and if appropriate, take any actions warranted by the review. Specifically, review Federal Acquisition Regulation procedures contained in:

- a) subparts 2.1 and 16.5 for task orders to contain clearly defined performance work statements,
- b) subpart 37.6 for measurable outcomes,
- c) subpart 37.1 for personal services job elements,
- d) subpart 7.5 for inherently governmental duties,
- e) part 15 for determinations of fair and reasonable prices for modifications over \$700,000 (Finding B), and
- f) subpart 32.9, for payments to be made based on receipt of proper invoice and satisfactory contract performance (Finding C).

USSOCOM Response to Recommendation A.5. To ensure current and future task orders are compliant with the referenced FAR cites, USSOCOM will initiate and complete a review of all GBPS task orders.

Timeline for Completion of Recommendation A.5. April 2013.

DoD IG Recommendation B.1. (Reference Draft Report, Page 15). Implement controls to verify contracting personnel adhere to Federal Acquisition Regulation Subpart 15.4 and perform price analysis for modifications over \$700,000.

USSOCOM Response to Recommendation B.1. Concur.

Timeline for Completion of Recommendation B.1. Actions undertaken to address this finding have been completed. Contracting officers are adhering to the requirements of FAR Part 15.4 and performing price analysis for task order modifications in addition to initial task order award.

DoD IG Recommendation B.2. (Reference Draft Report, Page 15). Retain, as part of contract file, supporting documentation used to make price reasonableness determination.

USSOCOM Response to Recommendation B.2. As documentation supporting the pricing determinations for modifications is generated, it will be included in the task order file.

Timeline for Completion of Recommendation B.2. Action will be on-going until all task orders have expired.

DoD IG Recommendation B.3. (Reference Draft Report, Page 15). Establish metrics to address whether contracting officers are performing price reasonableness determination for the Global Battle-staff and Program Support contract.

USSOCOM Response to Recommendation B.3. Metrics are not necessary to determine whether contracting officers are performing price reasonableness. The documentation will be generated, reviewed by the supervisory contracting officer to ensure compliance, and retained with the documentation generated to award the modification.

Timeline for Completion of Recommendation B.3. Action will be on-going until all task orders have expired.

DoD IG Recommendation B.4. (Reference Draft Report, Page 15). Require an annual Procurement Management Review of the Global Battle-staff and Program Support contract procedures and records.

USSOCOM Response to Recommendation B.4. Additional reviews will be conducted in response to other recommendations in this Report; new processes have been implemented; internal and peer reviews are currently being conducted; and, PMRs will be conducted in accordance with established schedules. The mission and limited resources do not allow USSOCOM to support annual PMRs on the GBPS contracts.

Timeline for Completion of Recommendation B.4. No action required.

DoD IG Recommendation C.1. (Reference Drat Report, Page 19). Implement procedures for the contracting officer or the contracting officer representatives to verify contractor performance and validate contractor payment requests before certifying invoices for payment.

USSOCOM Response to Recommendation C.1. Contracting Officers are conducting an aggressive program to train CORs on the proper use of Wide Area Work Flow to process invoices and ensure compliance with their fiduciary responsibly to ensure payment is made only for services rendered and to which the contractor is entitled.

Timeline for Completion of Recommendation C.1. 15 Mar 2013.

DOD IG Recommendation C.2. (Reference Draft Report, Page 19). Direct contracting officers to train the Global Battle-staff and Program Support contacting officer's representatives on the Wide Area Work Flow invoice certification process.

USSOCOM Response to Recommendation C.2. Contracting Officers are conducting an aggressive program to train CORs on the proper use of Wide Area Work Flow to process invoices and ensure compliance with their fiduciary responsibly to ensure payment is made only for services rendered and to which the contractor is entitled.

Timeline for Completion of Recommendation C.2. 15 Mar 2013.

USSOCOM RESPONSE TO APPENDIX A.

No comments.

USSOCOM RESPONSE TO APPENDIX B AND C.

It is requested that the information contained within Appendix B be provided for all contracts listed in Appendix C (as adjusted to reflect the particular finding). Without the information similar to Appendix B, it is unclear what the specific wording issue may be. Thus, USSOCOM is unable to respond.



Inspector General Department of Defense

